

WACHTELL, LIPTON, ROSEN & KATZ

Harold S. Novikoff
 Marc Wolinsky
 Emil A. Kleinhaus
 51 West 52nd Street
 New York, New York 10019-6150
 Telephone: (212) 403-1000
 Facsimile: (212) 403-2000

KELLEY DRYE & WARREN LLP

John M. Callagy
 Nicholas J. Panarella
 Martin A. Krolewski
 101 Park Avenue
 New York, New York 10178
 Telephone: (212) 808-7800
 Facsimile: (212) 808-7897

Attorneys for Defendant J.P. Morgan Whitefriars Inc.

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

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (REG)
Debtors.	:	(Jointly Administered)
<hr/>		
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)
vs.	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for various lenders party to the Term Loan Agreement described herein, <i>et al.</i> ,	:	
Defendants.	:	

**ANSWER OF DEFENDANT
 J.P. MORGAN WHITEFRIARS, INC.**

J.P. Morgan Whitefriars Inc. (“Whitefriars”), by its undersigned attorneys, for its
 Answer to the Amended Complaint dated May 20, 2015 (“Amended Complaint”) of the Motors

Liquidation Company Avoidance Action Trust, by and through Wilmington Trust Company, solely in its capacity as the trust administrator and trustee (“Plaintiff”), answers as follows:

1. States that the allegations of paragraph 1 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Amended Complaint.

2. States that the allegations of paragraph 2 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Amended Complaint.

3. States that the allegations of the first sentence of paragraph 3 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 3 of the Amended Complaint. In accordance with Federal Rule of Bankruptcy Procedure 7012(b), to the extent that a response is required to the allegations of the second sentence of paragraph 3 of the Amended Complaint, Whitefriars admits that the claims for relief alleged in the Amended Complaint are statutorily “core” under 28 U.S.C. § 157(b).

4. States the allegations on paragraph 4 of the Amended Complaint do not contain any allegations against Whitefriars making a responsive pleading unnecessary. To the extent a response is required, in accordance with Local Bankruptcy Rule 7012-1, Whitefriars

further states that it does not consent to the entry of final orders or judgment by the Bankruptcy Court if it is determined that the Bankruptcy Court does not have jurisdiction to enter a final judgment or order consistent with Article III of the United States Constitution.

5. States that the allegations of paragraph 5 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Amended Complaint.

6. Admits that Motors Liquidation Company f/k/a General Motors Corporation and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on June 1, 2009 (the “Petition Date”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Amended Complaint.

8. States that the allegations of paragraph 8 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies the allegations of paragraph 8 of the Amended Complaint, except admits that the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 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 dated June 25, 2009 (the “DIP Order”) provides the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “Committee”) with certain limited rights “with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Amended Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Amended Complaint.

12. States that the allegations of paragraph 12 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies the allegations of paragraph 12 of the Amended Complaint, except admits that the Court entered an order (the “Confirmation Order”) confirming the *Debtors’ Second Amended Joint Chapter 11 Plan* (the “Plan”) and refers to the Plan for the terms set forth therein.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Amended Complaint.

14. States that the allegations of paragraph 14 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies the allegations of paragraph 14 of the Amended Complaint and refers to the DIP Order, the Confirmation Order, the Plan and the Trust Agreement for the terms set forth therein.

15-237. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 15 – 237 of the Amended Complaint.

238. Admits that Whitefriars received a transfer under a term loan agreement, dated as of November 29, 2006 (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the “Term Loan Agreement”), from JPMorgan Chase Bank, N.A. (“JPMCB”), as administrative agent (“Administrative Agent”) as defined in the Term Loan Agreement for lenders under the Term Loan Agreement.

239-568. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 239 – 568 of the Amended Complaint.

569. States that the allegations of the last sentence of paragraph 569 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, and with regard to the other allegations of paragraph 569 of the Amended Complaint, denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 569 of the Amended Complaint.

570. States that the allegations of paragraph 570 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies the allegations of paragraph 570 of the Amended Complaint.

571. Denies the allegations of paragraph 571, except admits that General Motors Corporation, Saturn Corporation and JPMCB, as Administrative Agent, entered into the Term Loan Agreement and refers to the Term Loan Agreement for the terms set forth therein.

572. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 572 of the Amended Complaint.

573. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 573 of the Amended Complaint.

574. Denies the allegations of paragraph 574 of the Amended Complaint, except admits that the Debtors filed a motion on the Petition Date seeking, *inter alia*, authority from the Bankruptcy Court to obtain post-petition financing (“DIP Motion”) and refers to the DIP Motion for the terms set forth therein.

575. Denies the allegations of paragraph 575 of the Amended Complaint, except admits that the Debtors filed the DIP Motion seeking, *inter alia*, authority from the Bankruptcy Court to apply the proceeds of the DIP Credit Facility [as defined in the DIP Order] to repay amounts outstanding under the Term Loan Agreement and refers to the DIP Motion for the terms set forth therein.

576. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 576 of the Amended Complaint, except admits that the DIP Order provides the Committee with certain limited rights “with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

577. Denies the allegations of paragraph 577 of the Amended Complaint, except admits that DIP Credit Facility [as defined in the DIP Order] was approved by the Bankruptcy Court and that the DIP Order provides the Committee with certain limited rights “with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

578. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 578 of the Amended Complaint.

579. States that the allegations of paragraph 579 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies the allegations of paragraph 579 of the Amended Complaint and refers to the DIP Order for the terms set forth therein.

580. Denies the allegations of paragraph 580 of the Amended Complaint, except admits that the Committee purported to bring this action to challenge the first-priority lien that secured the loan made under the Term Loan Agreement.

581. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 581 of the Amended Complaint.

582. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 582 of the Amended Complaint.

583. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 583 of the Amended Complaint.

584. Denies the allegations of paragraph 584 of the Amended Complaint, except admits that on or about March 1, 2013, the Bankruptcy Court entered a *Decision on Cross Motions for Summary Judgment* (“Decision”) [Adv. Pro. Dkt. No. 71], a *Judgment* (“Judgment”) [Adv. Pro. Dkt. No. 73] and an *Order on Cross Motions for Summary Judgment* (“Order”) [Adv. Pro. Dkt. No. 72] and refers to the Decision, the Judgment, and the Order for the terms set forth therein.

585. Denies the allegations of paragraph 585 of the Amended Complaint, except admits that on or about January 21, 2015, the United States Court of Appeals for the Second Circuit entered a decision (the “Second Circuit Decision”) and refers to the Second Circuit Decision for the terms set forth therein.

**AS AND FOR AN ANSWER
TO THE FIRST CLAIM FOR RELIEF**

586. Repeats and re-alleges its responses to paragraphs 1 through 585 of the Amended Complaint with the same force and effect as if fully set forth herein.

587. States that the allegations of paragraph 587 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 587 of the Amended Complaint.

588. Denies the allegations of paragraph 588 of the Amended Complaint.

589. Denies the allegations of paragraph 589 of the Amended Complaint.

**AS AND FOR AN ANSWER
TO THE SECOND CLAIM FOR RELIEF**

590. Repeats and re-alleges its responses to paragraphs 1 through 589 of the Amended Complaint with the same force and effect as if fully set forth herein.

591. Denies the allegations of paragraph 591 of the Amended Complaint.

592. States that the allegations of paragraph 592 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 592 of the Amended Complaint.

593. Denies the allegations of paragraph 593 of the Amended Complaint, except admits that the DIP Order authorized the Debtors to apply the proceeds of the DIP Credit Facility [as defined in the DIP Order] to repay amounts outstanding under the Term Loan Agreement and refers to the DIP Order for the terms set forth therein.

594. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 594 of the Amended Complaint.

595. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 595 of the Amended Complaint.

596. Denies the allegations of paragraph 596 of the Amended Complaint.

597. Denies the allegations of paragraph 597 of the Amended Complaint, except admits that the DIP Order provides the Committee with certain limited rights “with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

598. Denies the allegations of paragraph 598 of the Amended Complaint.

599. Denies the allegations of paragraph 599 of the Amended Complaint.

600. Denies the allegations of paragraph 600 of the Amended Complaint.

601. Denies the allegations of the first sentence of paragraph 601 of the Amended Complaint, except admits that the collateral was secured and perfected by multiple UCC-1 financing statements other than the UCC-1 financing statement filed with the Delaware Secretary of State on November 30, 2006 and bearing the number “6416808 4”. Denies the allegations of the second sentence of paragraph 601 of the Amended Complaint.

602. States that the allegations of paragraph 602 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a

response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 602 of the Amended Complaint.

603. Denies the allegations of paragraph 603 of the Amended Complaint.

**AS AND FOR AN ANSWER
TO THE THIRD CLAIM FOR RELIEF**

604. Repeats and re-alleges its responses to paragraphs 1 through 603 of the Amended Complaint with the same force and effect as if fully set forth herein.

605. Denies the allegations of paragraph 605 of the Amended Complaint.

606. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 606 of the Amended Complaint.

607. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 607 of the Amended Complaint.

608. States that the allegations of paragraph 608 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 608 of the Amended Complaint.

609. States that the allegations of paragraph 609 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 609 of the Amended Complaint.

610. States that the allegations of paragraph 610 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 610 of the Amended Complaint.

611. States that the allegations of paragraph 611 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 611 of the Amended Complaint.

612. Denies the allegations of paragraph 612 of the Amended Complaint.

613. Denies the allegations of paragraph 613 of the Amended Complaint.

614. States that the allegations of paragraph 614 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Whitefriars denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 614 of the Amended Complaint.

615. Denies the allegations of paragraph 615 of the Amended Complaint.

**AS AND FOR AN ANSWER
TO THE FOURTH CLAIM FOR RELIEF**

616. Repeats and re-alleges its responses to paragraphs 1 through 615 of the Amended Complaint with the same force and effect as if fully set forth herein.

617. Denies the allegations of paragraph 617 of the Amended Complaint.

618. Denies the allegations of paragraph 618 of the Amended Complaint.

Whitefriars further denies and objects to each one of the Plaintiff's "prays for judgment" numbered 1 through 8 and set forth on pages on pages 77 and 78 of the Amended Complaint.

ADDITIONAL DEFENSES

In asserting the following additional defenses to Plaintiff's claims, Whitefriars does not concede that the assertion of such defenses imposes any burden of proof or persuasion on with respect thereto. Furthermore, Whitefriars has not yet completed its investigation and, to the extent that investigation and/or discovery warrant, reserves the right to supplement, amend or delete any or all of the following additional defenses prior to any trial of this action, and to assert any additional cross-claims, counterclaims, and third-party claims as they become known or available.

At the present time, Whitefriars asserts that the claims alleged in the Amended Complaint against Whitefriars are barred, in whole or in part, because:

FIRST DEFENSE

The Amended Complaint fails to state a claim against Whitefriars upon which relief may be granted.

SECOND DEFENSE

Plaintiff is estopped from alleging that the security interest of Whitefriars, was terminated or, in the alternative, the Bankruptcy Court should find that the Debtors held the collateral under the Term Loan Agreement pursuant to a constructive trust.

THIRD DEFENSE

Any injury or damages to the Plaintiff should be reduced to the extent that the culpable conduct of others caused or contributed to any damages or injury that the Plaintiff may have sustained.

FOURTH DEFENSE

The claims asserted in the Amended Complaint against Whitefriars are barred by the doctrines of *in pari delicto*, unclean hands and/or the *Wagoner* Rule.

FIFTH DEFENSE

Whitefriars did not authorize the termination of its secured interest.

SIXTH DEFENSE

Whitefriars did not waive its security interest in certain assets of the Debtors pursuant to the Term Loan Agreement and the multiple UCC-1 financing statements filed throughout the United States pursuant to the Term Loan Agreement.

SEVENTH DEFENSE

Whitefriars was a secured party and had a perfected security interest on the Petition Date in certain assets of the Debtors pursuant to the Term Loan Agreement as set forth in multiple UCC-1 financing statements filed throughout the United States, including, but not limited to the UCC-1 financing statement numbered 6416822 3 and filed on November 30, 2006 with the Secretary of State of Delaware listing Saturn Corporation as the “debtor” as well as multiple state fixture filings.

EIGHTH DEFENSE

At the time any of the purported preferential transfers referenced in the Amended Complaint were allegedly made by the Debtors, Whitefriars did not receive more than it would

have received had the Debtors' bankruptcy cases been cases under chapter 7 of the Bankruptcy Code, had such transfers not been made, and had Whitefriars received payment therein to the extent provided in the provisions of the Bankruptcy Code.

NINTH DEFENSE

Pursuant to Bankruptcy Code section 547(c)(2), the alleged transfers sought from Whitefriars in the Amended Complaint were (a) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and Whitefriars, (b) made in the ordinary course of business or financial affairs of the Debtors and Whitefriars, and (c) made according to ordinary business terms.

TENTH DEFENSE

The claims asserted in the Amended Complaint against Whitefriars are barred by the doctrine of earmarking.

ELEVENTH DEFENSE

The claims asserted in the Amended Complaint against Whitefriars to avoid the transfers under 11 U.S.C. § 549 are barred insofar as such transfers were not of property of the estate.

TWELFTH DEFENSE

The claims asserted in the Amended Complaint against Whitefriars are barred, in whole or in part, by applicable statutes of limitations.

THIRTEENTH DEFENSE

The claims asserted in the Amended Complaint against Whitefriars are barred to the extent that Whitefriars was a mere conduit with respect to any of the alleged transfers.

FOURTEENTH DEFENSE

Pursuant to the terms of the DIP Order, to the extent JPMCB, as Administrative Agent, made payments to lenders other than Whitefriars, Whitefriars has no responsibility or liability for such amounts paid and is exculpated for any and all such liabilities.

FIFTEENTH DEFENSE

The Plaintiff lacks standing and authority under the DIP Order or otherwise to bring the claims alleged, and the claims did not survive the confirmation of the Debtors' chapter 11 plan.

SIXTEENTH DEFENSE

Whitefriars hereby asserts all defenses available under federal law and under any applicable state law. Additional facts may be revealed in discovery or otherwise that support additional defenses presently available, but unknown, to Whitefriars. Whitefriars therefore reserves its right to assert additional defenses in the event discovery or investigation reveals additional defenses or such additional defenses become apparent at trial.

SEVENTEENTH DEFENSE

Whitefriars hereby adopts and incorporates by reference any and all other defenses asserted or to be asserted by any other defendants named in the Amended Complaint to the extent that such defenses are available to Whitefriars and do not negatively impact the rights of Whitefriars.

DEMAND FOR JURY TRIAL

Whitefriars hereby demands, pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure, a trial by jury of all issues raised in the above-captioned adversary proceeding.

WHEREFORE, J.P. Morgan Whitefriars Inc. respectfully requests that judgment
be entered in its favor as follows:

- A. Dismissing with prejudice Plaintiff's Amended Complaint in its entirety and on the merits;
- B. Awarding Whitefriars its costs of defending this action, including reasonable attorneys' fees, costs and disbursements; and
- C. Awarding to Whitefriars such other and further relief as this Court may deem just and proper.

Dated: New York, New York
November 16, 2015

Respectfully submitted,

KELLEY DRYE & WARREN LLP

By: /s/ John M. Callagy
John M. Callagy
Nicholas J. Panarella
Martin A. Krolewski
101 Park Avenue
New York, New York 10178
(212) 808-7800

-and-

WACHTELL, LIPTON, ROSEN & KATZ
Harold S. Novikoff
Marc Wolinsky
Emil A. Kleinhaus
51 West 52nd Street
New York, New York 10019-6150
Telephone: (212) 403-1000

Attorneys for Defendant
J.P. Morgan Whitefriars Inc.