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[\*complete list of represented Defendants listed in Appendix A; additional counsel listed on signature page]

**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)
MOTORS LIQUIDATION COMPANY	)	
AVOIDANCE ACTION TRUST, by and through	)	Adversary Proceeding
Wilmington Trust Company, solely in its capacity as	)	
Trust Administrator and Trustee,	)	Case No. 09-00504 (REG)
Plaintiff,	)	
vs.	)	
JPMORGAN CHASE BANK, N.A., <i>et al.</i> ,	)	
Defendants.	)	

**ANSWER AND CROSS-CLAIMS OF  
TERM LOAN LENDERS**

Certain Defendants identified in Appendix A hereto (collectively, the “Answering Defendants” or the “Cross-Claimants,” depending on the context), by their attorneys Jones Day and Munger, Tolles & Olson LLP, hereby answer the *First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* dated May 20, 2015 (the “Amended Complaint”) of Plaintiff the Motors Liquidation Company Avoidance Action Trust (the “AAT”),<sup>1</sup> and, by way of Cross-Complaint, assert cross-claims against Defendant and Cross-Defendant JPMorgan Chase Bank, N.A. (“JPMorgan”).

**ANSWER**

Each of the Answering Defendants hereby 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, each of the Answering Defendants 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, each of the Answering Defendants denies knowledge or information

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<sup>1</sup> On March 18, 2011, the AAT succeeded to the avoidance action claims of the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “Committee”). All references herein to the AAT also refer to and incorporate the Committee as predecessor to the AAT. Similarly, all references herein to the Committee also refer to and incorporate the AAT as successor to the Committee.

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, each of the Answering Defendants 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, each of the Answering Defendants admits that the claims for relief alleged in the Amended Complaint are statutorily “core” under 28 U.S.C. § 157(b).

4. States that the allegations of paragraph 4 of the Amended Complaint constitute representations of the AAT’s position regarding the Bankruptcy Court’s jurisdiction as to which no responsive pleading is required. To the extent a response is required, each of the Answering Defendants states at this time, pursuant to Rule 7012-1 of the Local Bankruptcy Rules for the Southern District of New York, 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; provided, however, that each of the Answering Defendants reserves its right to so consent at a later date.

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, each of the Answering Defendants 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 the allegations of paragraph 6 of the Amended Complaint.

7. Admits 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, each of the Answering Defendants 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 AAT 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, except admits that JPMorgan served as Administrative Agent under the Term Loan Agreement.

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, each of the Answering Defendants denies the allegations of paragraph 12 of the Amended Complaint, except admits that the Bankruptcy Court entered an 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, each of the Answering Defendants denies the allegations of paragraph 14, except admits that the DIP Order provides the AAT 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.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Amended Complaint.

16. Denies that Aegon/Transamerica Series Trust MFS Highyield is an entity that received a transfer made under the Term Loan Agreement and that it changed its names to Transamerica Series Trust but admits that Transamerica MFS High Yield Bond VP is an entity that received a transfer made under the Term Loan Agreement, that Transamerica MFS High Yield Bond VP is now known as Transamerica Aegon High Yield Bond VP, and that Transamerica Aegon High Yield Bond VP is a series of Transamerica Series Trust.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Amended Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Amended Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Amended Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the Amended Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Amended Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Amended Complaint.

23. Denies that Ares IIIR IVR CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Ares IIIR/IVR CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

24. Admits the allegations of paragraph 24 of the Amended Complaint.

25. Admits the allegations of paragraph 25 of the Amended Complaint.

26. Admits the allegations of paragraph 26 of the Amended Complaint.

27. Admits the allegations of paragraph 27 of the Amended Complaint.

28. Admits the allegations of paragraph 28 of the Amended Complaint.

29. Denies that Ares Enhanced Cr Opp Fd Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Ares Enhanced Credit

Opportunities Fund Ltd. is an entity that received a transfer made under the Term Loan Agreement.

30. Denies that Ares Enhanced LN INV III Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Ares Enhanced Loan Investment Strategy III, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

31. Denies that Ares Enhanced LN INV IR is an entity that received a transfer made under the Term Loan Agreement but admits that Ares Enhanced Loan Investment Strategy IR, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Amended Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33 of the Amended Complaint.

34. Admits the allegations of paragraph 34 of the Amended Complaint.

35. Admits the allegations of paragraph 35 of the Amended Complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Amended Complaint.

37. Denies that Avery Point CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Avery Point CLO, Limited is an entity that received a transfer made under the Term Loan Agreement.

38. Denies that Ballyrock CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Ballyrock CLO II Limited was an entity that received a transfer made under the Term Loan Agreement and that this entity has since terminated and been dissolved.

39. Denies that Ballyrock CLO III Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Ballyrock CLO III Limited was an entity that received a transfer made under the Term Loan Agreement and that this entity has since terminated and been dissolved.

40. Denies that Ballyrock CLO 2006-1 Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Ballyrock CLO 2006-1 LTD was an entity that received a transfer made under the Term Loan Agreement and that this entity has since terminated and been dissolved.

41. Denies that Ballyrock CLO 2006-2 Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Ballyrock CLO 2006-2 LTD was an entity that received a transfer made under the Term Loan Agreement and that this entity has since terminated and been dissolved.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Amended Complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Amended Complaint.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44 of the Amended Complaint.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Amended Complaint.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of the Amended Complaint.

47. Admits the allegations of paragraph 47 of the Amended Complaint.



48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48 of the Amended Complaint.

49. Admits the allegations of paragraph 49 of the Amended Complaint.

50. Admits the allegations of paragraph 50 of the Amended Complaint.

51. Denies that Black Diamond CLO 2006-1 Cayman Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Black Diamond CLO 2006-1 (Cayman) Ltd. is an entity that received a transfer made under the Term Loan Agreement.

52. Denies that Black Diamond International Funding Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Black Diamond International Funding, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53 of the Amended Complaint.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Amended Complaint.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Amended Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Amended Complaint.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of the Amended Complaint.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58 of the Amended Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59 of the Amended Complaint.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60 of the Amended Complaint.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61 of the Amended Complaint.

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62 of the Amended Complaint.

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63 of the Amended Complaint.

64. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Amended Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of the Amended Complaint.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Amended Complaint.

67. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67 of the Amended Complaint.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68 of the Amended Complaint.

69. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 69 of the Amended Complaint.

70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 70 of the Amended Complaint.

71. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71 of the Amended Complaint.

72. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 72 of the Amended Complaint.

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73 of the Amended Complaint.

74. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 74 of the Amended Complaint.

75. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75 of the Amended Complaint.

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 76 of the Amended Complaint.

77. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 77 of the Amended Complaint.

78. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78 of the Amended Complaint.

79. Denies that CAI Distressed Debt Opportunity Master Fund, Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that CAI Distressed Debt Opportunity Master Fund Ltd. is an entity that received a transfer made under the Term Loan Agreement and states that CAI Distressed Debt Opportunity Master Fund Ltd. is now known as Napier Park Distressed Debt Opportunity Master Fund Ltd.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80 of the Amended Complaint.

81. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 81 of the Amended Complaint.

82. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 82 of the Amended Complaint.

83. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 of the Amended Complaint.

84. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84 of the Amended Complaint.

85. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85 of the Amended Complaint.

86. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 86 of the Amended Complaint.

87. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 87 of the Amended Complaint.

88. Admits the allegations of paragraph 88 of the Amended Complaint.

89. Denies that Caterpillar Inc. Master Pension Trust is an entity that received a transfer made under the Term Loan Agreement but admits that Caterpillar Inc. Pension Master Trust is an entity that received a transfer made under the Term Loan Agreement.

90. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90 of the Amended Complaint.

91. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 91 of the Amended Complaint.

92. Denies that Chatham Light II CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Chatham Light II CLO, Limited is an entity that received a transfer made under the Term Loan Agreement.

93. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 93 of the Amended Complaint.

94. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 94 of the Amended Complaint.

95. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 95 of the Amended Complaint.

96. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 96 of the Amended Complaint.

97. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 97 of the Amended Complaint.

98. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 98 of the Amended Complaint.

99. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 99 of the Amended Complaint.

100. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 100 of the Amended Complaint.

101. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 101 of the Amended Complaint.

102. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 102 of the Amended Complaint.

103. Admits the allegations of paragraph 103 of the Amended Complaint.

104. Admits the allegations of paragraph 104 of the Amended Complaint and states that Credit Suisse Syndicated Loan Fund is now known as Bentham Wholesale Syndicated Loan Fund.

105. Denies that Crescent Senior Secured Floating Rate Loan Fund, LLC is an entity that received a transfer made under the Term Loan Agreement but admits that TCW Senior Secured Floating Rate Loan Fund LP is an entity that received a transfer made under the Term Loan Agreement and that TCW Senior Secured Floating Rate Loan Fund LP is now known as Crescent Senior Secured Floating Rate Loan Fund, LLC.

106. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 106 of the Amended Complaint.

107. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 107 of the Amended Complaint.

108. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 108 of the Amended Complaint.

109. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 109 of the Amended Complaint.

110. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 110 of the Amended Complaint.

111. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 111 of the Amended Complaint.

112. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 112 of the Amended Complaint.

113. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 113 of the Amended Complaint.

114. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 114 of the Amended Complaint.

115. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 115 of the Amended Complaint.

116. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 116 of the Amended Complaint.

117. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 117 of the Amended Complaint.

118. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 118 of the Amended Complaint.

119. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 119 of the Amended Complaint.

120. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 120 of the Amended Complaint.

121. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 121 of the Amended Complaint.

122. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 122 of the Amended Complaint.

123. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 123 of the Amended Complaint.

124. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 124 of the Amended Complaint.

125. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 125 of the Amended Complaint.

126. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 126 of the Amended Complaint.

127. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 127 of the Amended Complaint.

128. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 128 of the Amended Complaint.

129. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 129 of the Amended Complaint.

130. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 130 of the Amended Complaint.

131. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 131 of the Amended Complaint.

132. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 132 of the Amended Complaint.

133. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 133 of the Amended Complaint.



134. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 134 of the Amended Complaint.

135. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 135 of the Amended Complaint.

136. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 136 of the Amended Complaint.

137. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 137 of the Amended Complaint.

138. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 138 of the Amended Complaint.

139. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 139 of the Amended Complaint.

140. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 140 of the Amended Complaint.

141. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 141 of the Amended Complaint.

142. Admits the allegations of paragraph 142 of the Amended Complaint.

143. Admits the allegations of paragraph 143 of the Amended Complaint.

144. Admits the allegations of paragraph 144 of the Amended Complaint.

145. Admits the allegations of paragraph 145 of the Amended Complaint.

146. Denies that Eaton Vance Grayson & Co. is an entity that received a transfer made under the Term Loan Agreement but admits that Eaton Vance Floating Rate Income Portfolio is an entity that received a transfer made under the Term Loan Agreement and

that Eaton Vance Grayson & Co. is the nominal name of Eaton Vance Floating Rate Income Portfolio.

147. Admits the allegations of paragraph 147 of the Amended Complaint.

148. Denies that Eaton Vance International (Cayman Islands) Funds Ltd. – Floating-Rate Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Eaton Vance Medallion Floating Rate Income Portfolio is an entity that received a transfer made under the Term Loan Agreement and that Eaton Vance Medallion Floating Rate Income Portfolio changed its name to Eaton Vance International (Cayman Islands) Funds Ltd. – Floating-Rate Income Fund.

149. Admits the allegations of paragraph 149 of the Amended Complaint.

150. Admits the allegations of paragraph 150 of the Amended Complaint.

151. Admits the allegations of paragraph 151 of the Amended Complaint.

152. Admits the allegations of paragraph 152 of the Amended Complaint.

153. Admits the allegations of paragraph 153 of the Amended Complaint.

154. Admits the allegations of paragraph 154 of the Amended Complaint.

155. Admits the allegations of paragraph 155 of the Amended Complaint.

156. Admits the allegations of paragraph 156 of the Amended Complaint.

157. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 157 of the Amended Complaint.

158. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 158 of the Amended Complaint.

159. Admits the allegations of paragraph 159 of the Amended Complaint.

160. Admits the allegations of paragraph 160 of the Amended Complaint.

161. Admits the allegations of paragraph 161 of the Amended Complaint.

162. Admits the allegations of paragraph 162 of the Amended Complaint.

163. Admits the allegations of paragraph 163 of the Amended Complaint.

164. Admits the allegations of paragraph 164 of the Amended Complaint.

165. Admits the allegations of paragraph 165 of the Amended Complaint.

166. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 166 of the Amended Complaint.

167. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 167 of the Amended Complaint.

168. Denies that Fidelity Advisor Series I – Advisor Floating Rate High Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Advisor Series I: Fidelity Advisor Floating Rate High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

169. Denies that Fidelity Advisor Series I – Advisor High Income Advantage Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Advisor Series I: Fidelity Advisor High Income Advantage Fund is an entity that received a transfer made under the Term Loan Agreement.

170. Denies that Fidelity Advisor Series I – Fidelity Advisor High Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Advisor Series I: Fidelity Advisor High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

171. Denies that Fidelity Advisor Series II – Advisor Strategic Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity

Advisor Series II: Fidelity Advisor Strategic Income Fund is an entity that received a transfer made under the Term Loan Agreement.

172. Admits the allegations of paragraph 172 of the Amended Complaint.

173. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 173 of the Amended Complaint.

174. Denies the allegations of paragraph 174 of the Amended Complaint.

175. Denies the allegations of paragraph 175 of the Amended Complaint.

176. Denies that Fidelity Canadian Assett All is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Canadian Asset Allocation Fund is an entity that received a transfer made under the Term Loan Agreement.

177. Denies that Fidelity Cen Inv-Hi Inc PF I is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Fund 1, which was named Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Investment Portfolio in 2009, is an entity that received a transfer made under the Term Loan Agreement.

178. Denies that Fidelity Central Investment Portfolios LLC Fidelity Floating Rate is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Central Investment Portfolios LLC: Fidelity Floating Rate Central Fund, which was named Fidelity Central Investment Portfolios LLC: Fidelity Floating Rate Investment Portfolio in 2009, is an entity that received a transfer made under the Term Loan Agreement.

179. Denies that Fidelity Central Investment Portfolios LLC Fidelity High Income Central Fund 2 is an entity that received a transfer made under the Term Loan

Agreement but admits that Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Fund 2 is an entity that received a transfer made under the Term Loan Agreement.

180. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 180 of the Amended Complaint.

181. Denies that Fidelity Income Fund – Fidelity Total Bond Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Income Fund: Fidelity Total Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

182. Denies that Fidelity Puritan Trust – Puritan Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Puritan Trust: Fidelity Puritan Fund is an entity that received a transfer made under the Term Loan Agreement.

183. Denies that Fidelity School Street Trust-Strategic Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity School Street Trust: Fidelity Strategic Income Fund is an entity that received a transfer made under the Term Loan Agreement.

184. Denies that Fidelity Summer Street Trust-Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Summer Street Trust: Fidelity Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement.

185. Denies that Fidelity Summer Street Trust-High Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Fidelity Summer Street Trust: Fidelity High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

186. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 186 of the Amended Complaint.

187. Denies that Fidelity Variable Insurance Products V Strategic Income Portfolio is an entity that received a transfer made under the Term Loan Agreement but admits that Variable Insurance Products Fund V: Strategic Income Portfolio is an entity that received a transfer made under the Term Loan Agreement.

188. Denies that Fidelity VIP FD Hi Inc PF is an entity that received a transfer made under the Term Loan Agreement but admits that Variable Insurance Products Fund: High Income Portfolio is an entity that received a transfer made under the Term Loan Agreement.

189. Admits the allegations of paragraph 189 of the Amended Complaint.

190. Denies that First Trust Four Corners Senior Floating Rate Income Fund II is an entity that received a transfer made under the Term Loan Agreement but admits that First Trust Senior Floating Rate Income Fund II is an entity that received a transfer made under the Term Loan Agreement.

191. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 191 of the Amended Complaint.

192. Admits the allegations of paragraph 192 of the Amended Complaint.

193. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 193 of the Amended Complaint.

194. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 194 of the Amended Complaint.

195. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 195 of the Amended Complaint.

196. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 196 of the Amended Complaint.

197. Admits the allegations of paragraph 197 of the Amended Complaint.

198. Admits the allegations of paragraph 198 of the Amended Complaint.

199. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 199 of the Amended Complaint.

200. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 200 of the Amended Complaint.

201. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 201 of the Amended Complaint.

202. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 202 of the Amended Complaint.

203. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 203 of the Amended Complaint.

204. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 204 of the Amended Complaint.

205. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 205 of the Amended Complaint.

206. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 206 of the Amended Complaint.

207. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 207 of the Amended Complaint.

208. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 208 of the Amended Complaint.

209. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 209 of the Amended Complaint.

210. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 210 of the Amended Complaint.

211. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 211 of the Amended Complaint.

212. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 212 of the Amended Complaint.

213. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 213 of the Amended Complaint.

214. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 214 of the Amended Complaint.

215. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 215 of the Amended Complaint.

216. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 216 of the Amended Complaint.

217. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 217 of the Amended Complaint.

218. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 218 of the Amended Complaint.



219. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 219 of the Amended Complaint.

220. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 220 of the Amended Complaint.

221. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 221 of the Amended Complaint.

222. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 222 of the Amended Complaint.

223. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 223 of the Amended Complaint.

224. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 224 of the Amended Complaint.

225. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 225 of the Amended Complaint.

226. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 226 of the Amended Complaint.

227. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 227 of the Amended Complaint.

228. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 228 of the Amended Complaint.

229. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 229 of the Amended Complaint.

230. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 230 of the Amended Complaint.

231. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 231 of the Amended Complaint.

232. Denies that Iowa Public Employees Retirement System is an entity that received a transfer made under the Term Loan Agreement but admits that Iowa Public Employees' Retirement System is an entity that received a transfer made under the Term Loan Agreement.

233. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 233 of the Amended Complaint.

234. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 234 of the Amended Complaint.

235. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 235 of the Amended Complaint.

236. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 236 of the Amended Complaint.

237. Admits the allegations of paragraph 237 of the Amended Complaint.

238. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 238 of the Amended Complaint.

239. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 239 of the Amended Complaint.

240. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 240 of the Amended Complaint.

241. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 241 of the Amended Complaint.

242. Admits the allegations of paragraph 242 of the Amended Complaint.

243. Admits the allegations of paragraph 243 of the Amended Complaint.

244. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 244 of the Amended Complaint.

245. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 245 of the Amended Complaint.

246. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 246 of the Amended Complaint.

247. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 247 of the Amended Complaint.

248. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 248 of the Amended Complaint.

249. Denies that Legg Mason ClearBridge Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement and that it was known as WAMCO 2357 – Legg Mason Partners Capital & Income Fund but admits that Legg Mason Partners Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement and that it is now known as Legg Mason ClearBridge Capital & Income Fund.

250. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 250 of the Amended Complaint.

251. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 251 of the Amended Complaint.

252. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 252 of the Amended Complaint.

253. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 253 of the Amended Complaint.

254. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 254 of the Amended Complaint.

255. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 255 of the Amended Complaint.

256. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 256 of the Amended Complaint.

257. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 257 of the Amended Complaint.

258. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 258 of the Amended Complaint.

259. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 259 of the Amended Complaint.

260. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 260 of the Amended Complaint.

261. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 261 of the Amended Complaint.

262. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 262 of the Amended Complaint.

263. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 263 of the Amended Complaint.

264. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 264 of the Amended Complaint.

265. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 265 of the Amended Complaint.

266. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 266 of the Amended Complaint.

267. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 267 of the Amended Complaint.

268. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 268 of the Amended Complaint.

269. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 269 of the Amended Complaint.

270. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 270 of the Amended Complaint.

271. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 271 of the Amended Complaint.

272. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 272 of the Amended Complaint.

273. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 273 of the Amended Complaint.

274. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 274 of the Amended Complaint.

275. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 275 of the Amended Complaint.

276. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 276 of the Amended Complaint.

277. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 277 of the Amended Complaint.

278. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 278 of the Amended Complaint.

279. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 279 of the Amended Complaint.

280. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 280 of the Amended Complaint.

281. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 281 of the Amended Complaint.

282. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 282 of the Amended Complaint.

283. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 283 of the Amended Complaint.

284. Admits the allegations of paragraph 284 of the Amended Complaint.

285. Admits the allegations of paragraph 285 of the Amended Complaint.

286. Admits the allegations of paragraph 286 of the Amended Complaint.

287. Admits the allegations of paragraph 287 of the Amended Complaint.

288. Admits the allegations of paragraph 288 of the Amended Complaint.

289. Admits the allegations of paragraph 289 of the Amended Complaint.

290. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 290 of the Amended Complaint.

291. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 291 of the Amended Complaint.

292. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 292 of the Amended Complaint.

293. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 293 of the Amended Complaint.

294. Admits that Marlborough Street CLO, Ltd. is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 294 of the Amended Complaint.

295. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 295 of the Amended Complaint.

296. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 296 of the Amended Complaint.

297. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 297 of the Amended Complaint.

298. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 298 of the Amended Complaint.

299. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 299 of the Amended Complaint.

300. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 300 of the Amended Complaint.

301. Admits the allegations of paragraph 301 of the Amended Complaint.

302. Admits the allegations of paragraph 302 of the Amended Complaint.

303. Admits that MFS Diversified Income Fund, a series of MFS Series Trust XIII, is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 303 of the Amended Complaint.

304. Admits that MFS Diversified Income Fund, a series of MFS Series Trust XIII, is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 304 of the Amended Complaint.

305. Admits that MFS Diversified Income Fund, a series of MFS Series Trust XIII, is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 305 of the Amended Complaint.

306. Admits that MFS Floating Rate High Income Fund, a series of MFS Series Trust X (reorganized into MFS High Income Fund, a series of MFS Series Trust III), is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 306 of the Amended Complaint.

307. Admits that MFS Meridian Funds - MFS Floating Rate Income Fund (now known as MFS Meridian Funds - MFS Global High Yield Fund), is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 307 of the Amended Complaint.



308. Admits that MFS High Yield Opportunities Fund, a series of MFS Series Trust III (now known as MFS Global High Yield Fund, a series of MFS Series Trust III), is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 308 of the Amended Complaint.

309. Admits that MFS High Income Series, a series of MFS Variable Insurance Trust (reorganized into MFS High Yield Portfolio, a series of MFS Variable Insurance Trust II) is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 309 of the Amended Complaint.

310. Admits that MFS High Yield Variable Account (reorganized into MFS High Yield Portfolio, a series of MFS Variable Insurance Trust II) is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 310 of the Amended Complaint.

311. Admits the allegations of paragraph 311 of the Amended Complaint.

312. Admits the allegations of paragraph 312 of the Amended Complaint.

313. Admits the allegations of paragraph 313 of the Amended Complaint.

314. Admits that MFS High Income Fund, a series of MFS Series Trust III, is an entity that received a transfer made under the Term Loan Agreement, and that MFS Floating Rate High Income Fund, a series of MFS Series Trust X, was reorganized into MFS High Income Fund, a series of MFS Series Trust III, and denies the remainder of the allegations of paragraph 314 of the Amended Complaint.

315. Admits that MFS High Yield Opportunities Fund, a series of MFS Series Trust III (now known as MFS Global High Yield Fund, a series of MFS Series Trust III), is an

entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 315 of the Amended Complaint.

316. Admits that MFS Strategic Income Fund, a series of MFS Series Trust VIII, is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 316 of the Amended Complaint.

317. Admits that MFS Floating Rate High Income Fund, a series of MFS Series Trust X (reorganized into MFS High Income Fund, a series of MFS Series Trust III), is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 317 of the Amended Complaint.

318. Admits the allegations of paragraph 318 of the Amended Complaint.

319. Admits that MFS Strategic Income Portfolio, a series of MFS Variable Insurance Trust II, is an entity that received a transfer made under the Term Loan Agreement, and that MFS Strategic Income Series, a series of MFS Variable Insurance Trust, was reorganized into MFS Strategic Income Portfolio, a series of MFS Variable Insurance Trust II, and denies the remainder of the allegations of paragraph 319 of the Amended Complaint.

320. Admits that MFS Strategic Income Series, a series of MFS Variable Insurance Trust (reorganized into MFS Strategic Income Portfolio, a series of MFS Variable Insurance Trust II) is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 320 of the Amended Complaint.

321. Admits that MFS High Yield Portfolio, a series of MFS Variable Insurance Trust II, is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 321 of the Amended Complaint.

322. Admits that MFS Strategic Income Portfolio, a series of MFS Variable Insurance Trust II, is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 322 of the Amended Complaint.

323. Admits that MFS High Income Series, a series of MFS Variable Insurance Trust (reorganized into MFS High Yield Portfolio, a series of MFS Variable Insurance Trust II) is an entity that received a transfer made under the Term Loan Agreement and denies the remainder of the allegations of paragraph 323 of the Amended Complaint.

324. Denies that Microsoft Global Finance Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Microsoft Global Finance is an entity that received a transfer made under the Term Loan Agreement.

325. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 325 of the Amended Complaint.

326. Admits the allegations of the paragraph 326 of the Amended Complaint.

327. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 327 of the Amended Complaint.

328. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 328 of the Amended Complaint.

329. Denies that Mt. Wilson CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Mt. Wilson CLO, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

330. Denies that Mt. Wilson CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Mt. Wilson CLO II, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

331. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 331 of the Amended Complaint.

332. Admits the allegations of paragraph 332 of the Amended Complaint.

333. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 333 of the Amended Complaint.

334. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 334 of the Amended Complaint.

335. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 335 of the Amended Complaint.

336. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 336 of the Amended Complaint.

337. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 337 of the Amended Complaint.

338. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 338 of the Amended Complaint.

339. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 339 of the Amended Complaint.

340. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 340 of the Amended Complaint.

341. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 341 of the Amended Complaint.

342. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 342 of the Amended Complaint.

343. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 343 of the Amended Complaint.

344. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 344 of the Amended Complaint.

345. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 345 of the Amended Complaint.

346. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 346 of the Amended Complaint.

347. Denies that Oaktree Capital Management - Central States SE and SW Area Pens Plan is an entity that received a transfer made under the Term Loan Agreement but admits that Northern Trust Investments, Inc., as Named Fiduciary to the Central States, Southeast, and Southwest Areas Pension Fund.<sup>2</sup>

348. Denies that Oaktree Capital Management High Yield Trust is an entity that received a transfer made under the Term Loan Agreement but admits that OCM High Yield Trust is an entity that received a transfer made under the Term Loan Agreement.

349. Denies that Oaktree-DaimlerChrysler Corporation Master Retirement Trust, DaimlerChrysler Corporation Master Retirement Trust, or Chrysler LLC Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement but admits that State Street Bank and Trust Company as Trustee of the FCA US LLC Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement.

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<sup>2</sup> Northern Trust Investments, Inc., as Named Fiduciary to the Central States, Southeast, and Southwest Areas Pension Fund is represented for all purposes by Munger, Tolles & Olson LLP and not by Jones Day.

350. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 350 of the Amended Complaint.

351. Denies that Oaktree - General Board of Pension & Health Benefits of the UN Methodist Church Inc., General Board of Pension & Health Benefits of the UN Methodist Church Inc., or UMC Benefit Board, Inc. is an entity that received a transfer made under the Term Loan Agreement but admits that General Board of Pension and Health Benefits of the United Methodist Church is an entity that received a transfer made under the Term Loan Agreement.

352. Denies that Oaktree – High Yield LP is an entity that received a transfer made under the Term Loan Agreement but admits that Oaktree High Yield Fund, L.P. is an entity that received a transfer made under the Term Loan Agreement.

353. Denies that Oaktree – High Yield Fund II, LP is an entity that received a transfer made under the Term Loan Agreement but admits that Oaktree High Yield Fund II, L.P. is an entity that received a transfer made under the Term Loan Agreement.

354. Denies that Oaktree – High Yield Plus Fund LP is an entity that received a transfer made under the Term Loan Agreement but admits that Oaktree High Yield Plus Fund, L.P. is an entity that received a transfer made under the Term Loan Agreement.

355. Denies that Oaktree – International Paper Co. Commingled Investment Group Trust is an entity that received a transfer made under the Term Loan Agreement but admits that International Paper Company Commingled Investment Group Trust is an entity that received a transfer made under the Term Loan Agreement.

356. Denies that Oaktree Loan Fund, LP is an entity that received a transfer made under the Term Loan Agreement but admits that Oaktree Loan Fund, L.P. is an entity that received a transfer made under the Term Loan Agreement.

357. Denies that Oaktree Loan Fund 2X (Cayman), LP is an entity that received a transfer made under the Term Loan Agreement but admits that Oaktree Loan Fund 2X (Cayman), L.P. is an entity that received a transfer made under the Term Loan Agreement.

358. Denies that Oaktree – Pacific Gas & Electric Post Ret Med Trust for Non-Mgt Emp & Retirees is an entity that received a transfer made under the Term Loan Agreement but admits that Pacific Gas and Electric VEBA is an entity that received a transfer made under the Term Loan Agreement.

359. Denies that Oaktree – San Diego County Employees Retirement Association is an entity that received a transfer made under the Term Loan Agreement but admits that San Diego County Employees Retirement Association is an entity that received a transfer made under the Term Loan Agreement.

360. Denies that Oaktree Senior Loan Fund, LP is an entity that received a transfer made under the Term Loan Agreement but admits that Oaktree Senior Loan Fund, L.P. is an entity that received a transfer made under the Term Loan Agreement.

361. Denies that Oaktree – TMCT LLC is an entity that received a transfer made under the Term Loan Agreement but admits that TMCT, LLC is an entity that received a transfer made under the Term Loan Agreement.

362. Denies that OCM – IBM Personal Pension Plan is an entity that received a transfer made under the Term Loan Agreement but admits that IBM Personal Pension Plan Trust is an entity that received a transfer made under the Term Loan Agreement.

363. Denies that OCM-Pacific Gas & Electric Company Retirement Plan Master Trust is an entity that received a transfer made under the Term Loan Agreement but admits that PG&E Corporation Retirement Master Trust is an entity that received a transfer made under the Term Loan Agreement.

364. Denies that OCM-The State Teachers Retirement System of Ohio is an entity that received a transfer made under the Term Loan Agreement but admits that the State Teachers Retirement Board of Ohio is an entity that received a transfer made under the Term Loan Agreement.

365. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 365 of the Amended Complaint.

366. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 366 of the Amended Complaint.

367. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 367 of the Amended Complaint.

368. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 368 of the Amended Complaint.

369. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 369 of the Amended Complaint.

370. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 370 of the Amended Complaint.

371. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 371 of the Amended Complaint.



372. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 372 of the Amended Complaint.

373. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 373 of the Amended Complaint.

374. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 374 of the Amended Complaint.

375. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 375 of the Amended Complaint.

376. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 376 of the Amended Complaint.

377. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 377 of the Amended Complaint.

378. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 378 of the Amended Complaint.

379. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 379 of the Amended Complaint.

380. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 380 of the Amended Complaint.

381. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 381 of the Amended Complaint.

382. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 382 of the Amended Complaint.

383. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 383 of the Amended Complaint.

384. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 384 of the Amended Complaint.

385. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 385 of the Amended Complaint.

386. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 386 of the Amended Complaint.

387. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 387 of the Amended Complaint.

388. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 388 of the Amended Complaint.

389. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 389 of the Amended Complaint.

390. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 390 of the Amended Complaint.

391. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 391 of the Amended Complaint.

392. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 392 of the Amended Complaint.

393. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 393 of the Amended Complaint.

394. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 394 of the Amended Complaint.

395. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 395 of the Amended Complaint.

396. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 396 of the Amended Complaint.

397. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 397 of the Amended Complaint.

398. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 398 of the Amended Complaint.

399. Admits the allegations of paragraph 399 of the Amended Complaint.

400. Denies that Pyramis Hi Yld BD Comngl Pool is an entity that received a transfer made under the Term Loan Agreement but admits that Pyramis High Yield Bond Commingled Pool is an entity that received a transfer made under the Term Loan Agreement.

401. Denies that Pyramis High Yield Fund LLC is an entity that received a transfer made under the Term Loan Agreement but admits that Pyramis High Yield Fund, LLC is an entity that received a transfer made under the Term Loan Agreement.

402. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 402 of the Amended Complaint.

403. Denies that Race Point II CLO is an entity that received a transfer made under the Term Loan Agreement but admits that Race Point II CLO, Limited is an entity that received a transfer made under the Term Loan Agreement.

404. Denies that Race Point III CLO is an entity that received a transfer made under the Term Loan Agreement but admits that Race Point III CLO, Limited is an entity that received a transfer made under the Term Loan Agreement.

405. Denies that Race Point IV CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Race Point IV CLO, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

406. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 406 of the Amended Complaint.

407. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 407 of the Amended Complaint.

408. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 408 of the Amended Complaint.

409. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 409 of the Amended Complaint.

410. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 410 of the Amended Complaint.

411. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 411 of the Amended Complaint.

412. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 412 of the Amended Complaint.

413. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 413 of the Amended Complaint.

414. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 414 of the Amended Complaint.

415. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 415 of the Amended Complaint.

416. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 416 of the Amended Complaint.

417. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 417 of the Amended Complaint.

418. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 418 of the Amended Complaint.

419. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 419 of the Amended Complaint.

420. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 420 of the Amended Complaint.

421. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 421 of the Amended Complaint.

422. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 422 of the Amended Complaint.

423. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 423 of the Amended Complaint.

424. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 424 of the Amended Complaint.

425. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 425 of the Amended Complaint.

426. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 426 of the Amended Complaint.

427. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 427 of the Amended Complaint.

428. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 428 of the Amended Complaint.

429. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 429 of the Amended Complaint.

430. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 430 of the Amended Complaint.

431. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 431 of the Amended Complaint.

432. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 432 of the Amended Complaint.

433. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 433 of the Amended Complaint.

434. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 434 of the Amended Complaint.

435. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 435 of the Amended Complaint.

436. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 436 of the Amended Complaint.

437. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 437 of the Amended Complaint.

438. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 438 of the Amended Complaint.

439. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 439 of the Amended Complaint.

440. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 440 of the Amended Complaint.

441. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 441 of the Amended Complaint.

442. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 442 of the Amended Complaint.

443. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 443 of the Amended Complaint.

444. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 444 of the Amended Complaint.

445. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 445 of the Amended Complaint.

446. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 446 of the Amended Complaint.

447. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 447 of the Amended Complaint.

448. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 448 of the Amended Complaint.

449. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 449 of the Amended Complaint.

450. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 450 of the Amended Complaint.

451. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 451 of the Amended Complaint.

452. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 452 of the Amended Complaint.

453. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 453 of the Amended Complaint.

454. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 454 of the Amended Complaint.

455. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 455 of the Amended Complaint.

456. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 456 of the Amended Complaint.

457. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 457 of the Amended Complaint.



458. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 458 of the Amended Complaint.

459. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 459 of the Amended Complaint.

460. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 460 of the Amended Complaint.

461. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 461 of the Amended Complaint.

462. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 462 of the Amended Complaint.

463. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 463 of the Amended Complaint.

464. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 464 of the Amended Complaint.

465. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 465 of the Amended Complaint.

466. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 466 of the Amended Complaint.

467. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 467 of the Amended Complaint.

468. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 468 of the Amended Complaint.

469. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 469 of the Amended Complaint.

470. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 470 of the Amended Complaint.

471. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 471 of the Amended Complaint.

472. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 472 of the Amended Complaint.

473. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 473 of the Amended Complaint.

474. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 474 of the Amended Complaint.

475. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 475 of the Amended Complaint.

476. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 476 of the Amended Complaint.

477. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 477 of the Amended Complaint.

478. Admits the allegations of paragraph 478 of the Amended Complaint.

479. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 479 of the Amended Complaint.

480. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 480 of the Amended Complaint.

481. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 481 of the Amended Complaint.

482. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 482 of the Amended Complaint.

483. Denies that Sankaty High Yield Partners III LP is an entity that received a transfer made under the Term Loan Agreement but admits that Sankaty High Yield Partners III, L.P. is an entity that received a transfer made under the Term Loan Agreement.

484. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 484 of the Amended Complaint.

485. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 485 of the Amended Complaint.

486. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 486 of the Amended Complaint.

487. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 487 of the Amended Complaint.

488. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 488 of the Amended Complaint.

489. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 489 of the Amended Complaint.

490. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 490 of the Amended Complaint.

491. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 491 of the Amended Complaint.

492. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 492 of the Amended Complaint.

493. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 493 of the Amended Complaint.

494. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 494 of the Amended Complaint.

495. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 495 of the Amended Complaint.

496. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 496 of the Amended Complaint.

497. Denies that SSS Funding II, LLC is an entity that received a transfer made under the Term Loan Agreement but admits that SSS Funding II LLC is an entity that received a transfer made under the Term Loan Agreement.

498. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 498 of the Amended Complaint.

499. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 499 of the Amended Complaint.

500. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 500 of the Amended Complaint.

501. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 501 of the Amended Complaint.

502. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 502 of the Amended Complaint.

503. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 503 of the Amended Complaint.

504. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 504 of the Amended Complaint.

505. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 505 of the Amended Complaint.

506. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 506 of the Amended Complaint.

507. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 507 of the Amended Complaint.

508. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 508 of the Amended Complaint.

509. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 509 of the Amended Complaint.

510. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 510 of the Amended Complaint.

511. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 511 of the Amended Complaint.

512. Admits the allegations of paragraph 512 of the Amended Complaint.

513. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 513 of the Amended Complaint.

514. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 514 of the Amended Complaint.

515. Admits the allegations of paragraph 515 of the Amended Complaint.

516. Admits the allegations of paragraph 516 of the Amended Complaint.

517. Denies that TCW Velocity CLO is an entity that received a transfer made under the Term Loan Agreement but admits that Velocity CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

518. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 518 of the Amended Complaint.

519. Denies that Texas County & District Ret System is an entity that received a transfer made under the Term Loan Agreement but admits that Texas County & District Retirement System is an entity that received a transfer made under the Term Loan Agreement.

520. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 520 of the Amended Complaint.

521. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 521 of the Amended Complaint.

522. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 522 of the Amended Complaint.

523. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 523 of the Amended Complaint.

524. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 524 of the Amended Complaint.

525. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 525 of the Amended Complaint.

526. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 526 of the Amended Complaint.

527. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 527 of the Amended Complaint.

528. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 528 of the Amended Complaint.

529. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 529 of the Amended Complaint.

530. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 530 of the Amended Complaint.

531. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 531 of the Amended Complaint.

532. Denies that TMCT II LLC is an entity that received a transfer made under the Term Loan Agreement but admits that TMCT II, LLC is an entity that received a transfer made under the Term Loan Agreement.

533. Denies that Transamerica Series Trust is an entity that received a transfer made under the Term Loan Agreement and that it was formerly known as Aegon/Transamerica Series Trust MFS Highyield but admits that Transamerica MFS High Yield Bond VP is an entity that received a transfer made under the Term Loan Agreement, that Transamerica MFS High Yield Bond VP is now known as Transamerica Aegon High Yield Bond VP, and that Transamerica Aegon High Yield Bond VP is a series of Transamerica Series Trust.

534. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 534 of the Amended Complaint.

535. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 535 of the Amended Complaint.

536. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 536 of the Amended Complaint.

537. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 537 of the Amended Complaint.

538. Denies that UMC Benefit Board, Inc., General Board of Pension & Health Benefit of the UN Methodist Church Inc., or Oaktree - General Board of Pension & Health Benefits of the UN Methodist Church Inc. is an entity that received a transfer made under the Term Loan Agreement but admits that General Board of Pension and Health Benefits of the United Methodist Church is an entity that received a transfer made under the Term Loan Agreement.

539. Admits the allegations of paragraph 539 of the Amended Complaint.

540. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 540 of the Amended Complaint.

541. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 541 of the Amended Complaint.

542. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 542 of the Amended Complaint.

543. Admits the allegations of paragraph 543 of the Amended Complaint.

544. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 544 of the Amended Complaint.



545. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 545 of the Amended Complaint.

546. Denies that WAMCO 2357 – Legg Mason Partners Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Legg Mason Partners Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement and that it is now known as Legg Mason ClearBridge Capital & Income Fund.

547. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 547 of the Amended Complaint.

548. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 548 of the Amended Complaint.

549. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 549 of the Amended Complaint.

550. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 550 of the Amended Complaint.

551. Denies that WAMCO Mt Wilson CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement but admits that Mt. Wilson CLO, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

552. Denies that WAMCO Western Asset Floating Rate High Income Fund LLC is an entity that received a transfer made under the Term Loan Agreement but admits that Western Asset Floating Rate High Income Fund, LLC is an entity that received a transfer made under the Term Loan Agreement.

553. Admits the allegations of paragraph 553 of the Amended Complaint.

554. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 554 of the Amended Complaint.

555. Admits the allegations of paragraph 555 of the Amended Complaint.

556. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 556 of the Amended Complaint.

557. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 557 of the Amended Complaint.

558. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 558 of the Amended Complaint.

559. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 559 of the Amended Complaint.

560. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 560 of the Amended Complaint.

561. Denies that Wells Fargo Advantage Income Funds: Income Plus Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Evergreen Core Plus Bond Fund is an entity that received a transfer made under the Term Loan Agreement and that Evergreen Core Plus Bond Fund was acquired by Wells Fargo Advantage Income Funds: Income Plus Fund.

562. Denies that Wells Fargo Advantage Income Opportunities Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Evergreen Income Advantage Fund is an entity that received a transfer made under the Term Loan Agreement and that Evergreen Income Advantage Fund is now known as Wells Fargo Advantage Income Opportunities Fund.

563. Denies that Wells Fargo Advantage Multi-Sector Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Evergreen Multi Sector Income Fund f/k/a Evergreen Managed Income Fund is an entity that received a transfer made under the Term Loan Agreement and that Evergreen Multi Sector Income Fund is now known as Wells Fargo Advantage Multi-Sector Income Fund.

564. Denies that Wells Fargo Advantage Utilities & High Income Fund is an entity that received a transfer made under the Term Loan Agreement but admits that Evergreen Utilities & High Income Fund is an entity that received a transfer made under the Term Loan Agreement and that Evergreen Utilities & High Income Fund is now known as Wells Fargo Advantage Utilities & High Income Fund.

565. Denies that Wells – Los Angeles Dept. of Water & Power Employees Retire Disability is an entity that received a transfer made under the Term Loan Agreement but admits that Water and Power Employees' Retirement, Disability and Death Benefit Insurance Plan is an entity that received a transfer made under the Term Loan Agreement.

566. Admits the allegations of paragraph 566 of the Amended Complaint.

567. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 567 of the Amended Complaint.

568. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 568 of the Amended Complaint.

569. 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, each of the Answering Defendants denies the allegations of paragraph 570 of the Amended Complaint, except admits that the AAT collectively refers to the parties listed in paragraphs 15 through 569 of the Amended Complaint as “Defendants.”

571. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 571 of the Amended Complaint, except admits that General Motors Corporation (“General Motors”), Saturn Corporation (“Saturn”), and JPMorgan, 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, except admits that certain lenders, including some of those named as Defendants in this action, (i) extended credit to the Debtors secured by a first-priority lien on certain assets of the Debtors pursuant to the terms of the Term Loan Agreement, the terms of which are set forth therein, and (ii) received payments during the 90 days prior to June 1, 2009 (the “Petition Date”) and/or after the Petition Date.

573. Admits the allegations of paragraph 573 of the Amended Complaint.

574. Denies knowledge or information sufficient to form a belief as to the truth of 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 postpetition financing (the “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 in full all claims under the Term Loan Agreement and refers to the DIP Motion for the terms set forth therein.

576. Denies the allegations of paragraph 576 of the Amended Complaint, except admits that the AAT was involved in negotiating the DIP Order and that the DIP Order provides the AAT with certain limited rights “with respect only to the perfection of the 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 the DIP Credit Facility (as defined in the DIP Order) was approved by the Bankruptcy Court on June 25, 2009 and that the DIP Order provides the AAT with certain limited rights “with respect only to the perfection of the 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 of paragraph 578 of the Amended Complaint, except admits that certain of the Answering Defendants have been repaid the interest and principal outstanding at the time of payment under the Term Loan Agreement out of the proceeds of the DIP Credit Facility (as defined in the DIP Order) and refers to the DIP Order for the terms set forth therein.

579. Denies the allegations of paragraph 579, except admits that the DIP Order states that “[a]ny Prepetition Senior Facilities Secured Party accepting Payment shall submit to the jurisdiction of the Bankruptcy Court” 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 AAT purports to bring this Amended Complaint to challenge a portion of the first-priority lien that secured the loan made under the Term Loan Agreement.

581. Denies the allegations of paragraph 581 of the Amended Complaint, except admits that two Uniform Commercial Code (“UCC”) financing statements were filed with the Delaware Secretary of State on November 30, 2006 in connection with the Term Loan Agreement (the “Term Loan UCC Financing Statements”), and refers to the Term Loan UCC Financing Statements for the terms set forth therein.

582. Denies the allegations of paragraph 582 of the Amended Complaint, except admits that a UCC-3 financing statement amendment dated October 30, 2008 (the “Termination Statement”) was filed with the Delaware Secretary of State, and refers to the Termination Statement for the terms set forth therein.

583. States that the allegations of paragraph 583 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, each of the Answering Defendants denies the allegations of paragraph 583 of the Amended Complaint.

584. Denies the allegations of paragraph 584 of the Amended Complaint, except admits that, on March 1, 2013, the Bankruptcy Court entered a decision, judgment, and order on the cross-motions for summary judgment filed by the AAT and JPMorgan and refers to the decision, judgment, and 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, each of the Answering Defendants denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 587 of the Amended Complaint.

588. States that the allegations of paragraph 588 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, each of the Answering Defendants denies the allegations of paragraph 588 of the Amended Complaint.

589. States that the allegations of paragraph 589 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, each of the Answering Defendants 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, each of the Answering Defendants admits that section 549(a) of the Bankruptcy Code states that “the trustee may avoid a transfer of property of the estate . . . that occurs after the commencement of the case . . . that is not authorized . . . by the court” and refers to section 549 of the Bankruptcy Code for the provisions set forth therein.

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 knowledge or information sufficient to form a belief as to the truth of 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 AAT 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 paragraph 601 of the Amended Complaint, except admits that some portion of the collateral was secured and perfected by filings other than the UCC-1 financing statement filed with the Delaware Secretary of State on November 30, 2006 and bearing the number “6416808 4” (the “Main Term Loan UCC-1”).

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, each of the Answering Defendants admits that section 550(a) of the Bankruptcy Code states that “to the extent that a transfer is avoided under section . . . 549 . . . [of Title 11], the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from . . . the initial transferee of such transfer or the entity for whose benefit such transfer was made . . . or . . . any immediate or mediate transferee of such initial transferee” and refers to section 550 of the Bankruptcy Code for the provisions set forth therein.

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. States that the allegations of paragraph 607 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, each of the Answering Defendants 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, each of the Answering Defendants 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, each of the Answering Defendants 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, each of the Answering Defendants 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, each of the Answering Defendants 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, each of the Answering Defendants admits that section 550(a) of the Bankruptcy Code states that “to the extent that a transfer is avoided under section . . . 547 . . . [of Title 11], the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from . . . the initial transferee of such transfer or the entity for whose benefit such transfer was made . . . or . . . any immediate or mediate transferee of such initial transferee” and refers to section 550 of the Bankruptcy Code for the provisions set forth therein.

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.

Each of the Answering Defendants denies that the AAT is entitled to any of the relief requested in its eight-paragraph prayer for relief on pages 77 and 78 of the Amended Complaint.

**AFFIRMATIVE DEFENSES**

In asserting the following defenses to the AAT’s claims, each of the Answering Defendants does not concede that the assertion of such defenses imposes any burden of proof or persuasion on it with respect thereto, nor do any of the Answering Defendants assume the burden

of proof or persuasion for any of the defenses set forth here or with respect to any matter as to which the AAT as Plaintiff has the burden. Further, each of the Answering Defendants reserves the right to supplement, amend, or delete any or all of the following affirmative defenses prior to any trial of this action to the extent that its ongoing investigation and/or discovery so warrant. Presently, each of the Answering Defendants asserts that the claims alleged in the Amended Complaint are barred, wholly or partially, because:

**FIRST DEFENSE**

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

**SECOND DEFENSE**

The service of process on the Answering Defendants was insufficient and the AAT's claims should therefore be dismissed for failure to serve properly the Answering Defendants.

**THIRD DEFENSE**

The claims asserted in the Amended Complaint against the Answering Defendants are barred by the doctrines of laches and equitable estoppel.

**FOURTH DEFENSE**

The claims asserted in the Amended Complaint against the Answering Defendants are barred by applicable statutes of limitations.

**FIFTH DEFENSE**

The Termination Statement is void and ineffective because JPMorgan, in its capacity as Administrative Agent for a syndicate of financial institutions on a different financing for General Motors (the "Synthetic Lease"), was not the secured party of record under the Term

Loan UCC Financing Statements and therefore had no power or authority to cause the Termination Statement to be filed.

#### **SIXTH DEFENSE**

The Termination Statement is void and ineffective because JPMorgan never obtained the consent of the Answering Defendants to cause the filing of the Termination Statement as required under the Term Loan Agreement.

#### **SEVENTH DEFENSE**

The Termination Statement is void and ineffective because JPMorgan, both in its capacity as Administrative Agent for the Synthetic Lease and in its capacity as Administrative Agent for the \$1.5 billion term loan (the "Term Loan"), exceeded the extent of its authority as an agent of its principals, including the Answering Defendants, when it caused the Termination Statement to be filed.

#### **EIGHTH DEFENSE**

The Termination Statement is void and ineffective because JPMorgan did not authorize its filing.

#### **NINTH DEFENSE**

The unauthorized and ineffective filing of the Termination Statement did not waive or terminate the security interests that the Answering Defendants had in certain assets of the Debtors pursuant to the Term Loan Agreement and the Term Loan UCC Financing Statements.

#### **TENTH DEFENSE**

The Answering Defendants were secured parties and beneficiaries of perfected security interests 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 Delaware Secretary of State listing Saturn as the “debtor.”

**ELEVENTH DEFENSE**

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

**TWELFTH DEFENSE**

The AAT is estopped from bringing the claims asserted in the Amended Complaint against the Answering Defendants.

**THIRTEENTH DEFENSE**

The claims asserted in the Amended Complaint against the Answering Defendants are barred by the doctrines of mistake, restitution, and unjust enrichment, which collectively or individually require reinstatement of the erroneously terminated financing statement.

**FOURTEENTH DEFENSE**

The Bankruptcy Court should find that the Debtors held the collateral under the Term Loan Agreement pursuant to a constructive trust for the benefit of the Answering Defendants and, therefore, that such collateral is excluded from the bankruptcy estate.

**FIFTEENTH DEFENSE**

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

**SIXTEENTH DEFENSE**

The claims asserted in the Amended Complaint are barred to the extent that any of the Answering Defendants are not transferees from which the AAT may recover the value of an avoided transfer under section 550 of the Bankruptcy Code.

**SEVENTEENTH DEFENSE**

The claims asserted in the Amended Complaint are barred by the single satisfaction rule set forth in section 550(d) of the Bankruptcy Code.

**EIGHTEENTH DEFENSE**

The claims asserted in the Amended Complaint are barred to the extent that any of the Answering Defendants were mere conduits with respect to any of the alleged transfers.

**NINETEENTH DEFENSE**

The AAT lacks standing and authority to bring the claims alleged, and the claims did not survive the confirmation of the Debtors' chapter 11 plan.

**TWENTIETH DEFENSE**

The claims asserted in the Amended Complaint are barred to the extent that any of the Answering Defendants did not receive a transfer made under the Term Loan Agreement on May 27, 2009.

**TWENTY-FIRST DEFENSE**

The claims asserted in the Amended Complaint are barred to the extent that any of the Answering Defendants did not receive a transfer made under the Term Loan Agreement on June 30, 2009.

**TWENTY-SECOND DEFENSE**

The AAT's Third Claim for Relief is barred because the purportedly preferential transfers are protected from avoidance by the "safe harbor" provisions of section 546(e) of the Bankruptcy Code.

**TWENTY-THIRD DEFENSE**

At the time any of the purported transfers referenced in the Amended Complaint were allegedly made by the Debtors, the Answering Defendants were perfected secured creditors

thereby excepting all of the alleged transfers from avoidance as preferential transfers pursuant to section 547(b)(5) of the Bankruptcy Code.

**TWENTY-FOURTH DEFENSE**

Pursuant to section 547(c)(2) of the Bankruptcy Code, the purported transfers sought from the Answering Defendants were (i) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and the Answering Defendants, (ii) made in the ordinary course of business or financial affairs of the Debtors and the Answering Defendants, and (iii) made according to ordinary business terms.

**TWENTY-FIFTH DEFENSE**

The claims asserted in the Amended Complaint against the Answering Defendants to avoid transfers under section 549 of the Bankruptcy Code are barred to the extent that such transfers were not property of the estate.

**TWENTY-SIXTH DEFENSE**

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

**TWENTY-SEVENTH DEFENSE**

Each of the Answering Defendants 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 the Answering Defendant.

**DEMAND FOR JURY TRIAL**

Each of the Answering Defendants 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, each of the Answering Defendants respectfully requests that judgment be entered in its favor as follows:

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

### **CROSS-CLAIMS**

Cross-Claimants<sup>3</sup> hereby assert the following cross-claims against JPMorgan. Cross-Claimants expressly reserve all the denials and defenses asserted in the Answer above, and nothing in these cross-claims should be deemed to constitute an admission of any aspect of the AAT's allegations.

### **INTRODUCTION**

1. Cross-Claimants—a group that consists of funds and trusts that invested on behalf of retirees, individuals, institutional investors, and others—are defendants in this adversary proceeding, not through any fault of their own, but solely due to the unauthorized and reckless acts and abdication of responsibility by Defendant and Cross-Defendant JPMorgan. JPMorgan recklessly and with gross negligence caused the filing of an improper UCC termination statement purporting to terminate the principal financing statement that perfected the security interest that protected Cross-Claimants and other lenders (collectively, the “Term Lenders”) in connection with the Term Loan. JPMorgan caused this filing in its capacity as an administrative agent for a *different* set of lenders and in connection with a transaction that was entirely separate from the Term Loan. JPMorgan's actions were taken wholly outside of the

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<sup>3</sup> Each of the Answering Defendants is a Cross-Claimant.

authority granted to it in connection with the Term Loan, in violation of the duties that JPMorgan owed to Cross-Claimants, and with full knowledge that *none* of the conditions for filing such a termination statement was present. Cross-Claimants represent over \$600 million of the Term Loan interests at issue in this adversary proceeding, as those interests are listed in Exhibits 3 and 4 of the Amended Complaint.

2. The Term Lenders, including Cross-Claimants, extended credit to General Motors based on the commitment and understanding that the Term Lenders would be protected by a perfected security interest in a substantial portion of General Motors's assets, the value of which was to remain well in excess of the amount needed to secure payment of the Term Loan. JPMorgan served as Administrative Agent to the Term Lenders. JPMorgan also undertook to serve as the Secured Party of Record for the Term Loan UCC Financing Statements filed to perfect the security interest.

3. In 2008, acting as Administrative Agent and Secured Party of Record for a completely different syndicate of lenders on a different financing for General Motors (the Synthetic Lease), and without any authority under the agreements governing the Term Loan, JPMorgan caused the filing of the Termination Statement that purported to terminate the Main Term Loan UCC-1, which protected a significant portion of the security interest in collateral securing the Term Loan. JPMorgan's acts were wrongful in and of themselves because they were entirely unauthorized and threatened to destroy the rights held by the Term Lenders. Moreover, JPMorgan carried out these acts despite obvious red flags that, among other things, the Termination Statement had nothing to do with the Synthetic Lease, but instead related to the collateral for the Term Loan.

4. In so doing, JPMorgan violated a fundamental obligation as Administrative Agent and Secured Party of Record—namely, the obligation *not* to cause to be filed UCC-3 termination statements that would destroy the perfection of the security interest on the collateral prior to the payoff of the loan or the voluntary release of the collateral. JPMorgan also deprived Cross-Claimants of a critical benefit to which they were entitled under the Term Loan agreements—namely, the perfected security interest that would protect the collateral supporting their interest in the Term Loan. In breaching this obligation, and committing these acts, JPMorgan exposed its principals, the Cross-Claimants, to the risk of potentially devastating losses on their secured loans.

5. That risk has now become a serious prospect for Cross-Claimants. Following JPMorgan's error, General Motors filed for Chapter 11 bankruptcy protection. Pursuant to the terms of this Court's DIP Order, and because of Cross-Claimants' status as secured creditors, Cross-Claimants received the interest and principal outstanding under the Term Loan Agreement. Then, within weeks of that repayment, General Motors's unsecured creditors filed this adversary proceeding challenging Cross-Claimants' right to repayment and demanding that the unsecured creditors be handed a massive windfall at Cross-Claimants' expense. The sole basis for this claim by the unsecured creditors (later the AAT) is the contention that JPMorgan's wrongful conduct destroyed the perfection of the security interest that was designed to protect the Term Lenders, including Cross-Claimants.

6. Following its 2008 error, JPMorgan engaged in a course of conduct that was calculated to serve its own interests at the expense of the Term Lenders. Among other things, with the cooperation of the AAT, JPMorgan spent the last six years litigating this case without the participation of Cross-Claimants, and while operating under a fundamental conflict

of interest, litigating in its own best interests and contrary to the interests of Cross-Claimants and the other Term Lenders.

7. JPMorgan's misconduct should not provide a basis for liability on the part of Cross-Claimants. As described in their Answer above, Cross-Claimants dispute the AAT's claims and deny that the filing of the Termination Statement was effective, as against Cross-Claimants, to destroy the perfection of any part of the Term Loan security interest. But to the extent that Cross-Claimants are subject to any liability in this adversary proceeding, JPMorgan must hold Cross-Claimants harmless. Cross-Claimants would not have been placed at risk of liability had it not been for JPMorgan's gross negligence, unauthorized acts, and breaches of duty. Accordingly, Cross-Claimants seek a judgment that JPMorgan breached its duties to Cross-Claimants, that JPMorgan acted wholly outside of any authority that it was granted in connection with the Term Loan, and that JPMorgan must hold Cross-Claimants harmless.

#### **THE PARTIES**

8. JPMorgan is a national banking association with its principal office in the State of Ohio.

9. Cross-Claimants are a diverse group of investors and investment funds that includes public and private employee pension funds and mutual funds held by members of the general public. Many Cross-Claimants purchase investments such as the Term Loan interests for the purpose of helping their clients and investors provide themselves with a secure retirement. Cross-Claimants are the largest subset of the Term Lenders that have been named as Defendants in this adversary proceeding, and all either owned Term Loan debt or are successors in interest to owners of Term Loan debt. According to the exhibits to the Amended Complaint, Plaintiff seeks to avoid payments of over \$600 million to Cross-Claimants for amounts due and outstanding to them.

10. Cross-Claimants' names are set forth in Appendix A hereto.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1332,<sup>4</sup> 1334, and 1367. The amount in controversy exceeds \$5 million.

12. Venue is proper under 28 U.S.C. § 1409(a) because these cross-claims arise in and relate to the underlying adversary proceeding, because the parties to the Term Loan agreements expressly consented to venue in this District, and because many of the events that give rise to the cross-claims took place within this District.

13. These cross-claims include both core claims as defined in 28 U.S.C. § 157(b)(2)(A) and non-core claims. To the extent that this or any other appropriate Court finds any part of this adversary proceeding, including any individual cross-claim, to be "non-core," or to the extent that 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, Cross-Claimants do not consent at this time to the entry of final orders and judgments by the Bankruptcy Court, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure and Rules 7008-1 and 7012-1 of the Local Bankruptcy Rules for the Southern District of New York; provided, however, that each of the Cross-Claimants reserves its right to so consent at a later date.

### **FACTUAL ALLEGATIONS**

#### **The Term Loan**

14. The Term Loan provided \$1.5 billion of essential financing to General Motors. Because of its size, the Term Loan was syndicated to a large number of lenders.

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<sup>4</sup> Many of the Cross-Claimants have citizenship diverse from that of JPMorgan. For example, General Electric Capital Corporation is a Delaware corporation with its principal place of business in Connecticut.

JPMorgan acted as arranger for the Term Loan, negotiating its terms and organizing the group of syndicated lenders. JPMorgan would not have been able to syndicate this Term Loan (and earn the substantial fees associated with that work) had it not been for the promise that syndicate members would be protected by a perfected first-priority security interest in collateral having a value far in excess of the amount of the loan.

15. Certain of the parties' rights and obligations are set out in two agreements relating to the Term Loan, each dated as of November 29, 2006: (i) a Term Loan Agreement; and (ii) a Collateral Agreement. Upon information and belief, JPMorgan and/or its representatives drafted both agreements, which were signed on behalf of JPMorgan by Richard W. Duker, a managing director at JPMorgan.

16. Any extension of credit to General Motors at the end of 2006 had to be undertaken with extreme caution. General Motors had incurred substantial financial losses, and there was widespread speculation that it might file for bankruptcy protection. Absent a perfected security interest, any interest in properties pledged as collateral to secure repayment of the Term Loan could be jeopardized by a General Motors bankruptcy. It was critically important, and it was expressly represented to Cross-Claimants, that the Term Loan would be protected by a first-priority perfected security interest in substantially all of the United States machinery, equipment, and special tools of General Motors.

17. The Term Loan agreements also included an express commitment that the collateral underlying the Term Loan would at all times be protected by a perfected, first-priority security interest. Specifically, Article II of the Collateral Agreement for the Term Loan reflected General Motors's grant to JPMorgan, for the benefit of the Secured Parties, of a first-priority security interest in a substantial portion of General Motors's assets, including all of General

Motors's fixtures and equipment at 42 different facilities across the United States, as well as associated intangibles, documents, and proceeds (the "Collateral"). General Motors granted JPMorgan, as Administrative Agent for the benefit of the Term Lenders, a security interest in the Collateral, which was to be perfected by the filing of UCC financing statements.

18. The security interest created by the Collateral Agreement for the Term Loan was perfected by the filing of 28 UCC-1 financing statements, the broadest of which was the Main Term Loan UCC-1. The Main Term Loan UCC-1 perfected the Term Lenders' security interest in equipment, fixtures, and related property at 42 General Motors manufacturing facilities across the United States.

19. Under the Term Loan Agreement, JPMorgan accepted the appointment as Administrative Agent for the Term Lenders, with authority to take certain specified actions on their behalf. Separately, JPMorgan undertook to serve as Secured Party of Record on the Term Loan UCC Financing Statements (including the Main Term Loan UCC-1) for the benefit of all Secured Parties on the Term Loan, including Cross-Claimants.

20. Upon information and belief, Duker was the JPMorgan employee with primary responsibility for arranging the Term Loan and for ensuring the execution of JPMorgan's duties as Administrative Agent and Secured Party of Record for the Term Loan.

21. JPMorgan had no authority either to terminate, or to cause others to terminate, the Term Loan UCC Financing Statements unless: (i) the Term Loan had been repaid in full; or (ii) the Term Lenders had consented in writing to the termination.

22. These limitations on JPMorgan's authority were central to the purpose and structure of the Term Loan. JPMorgan, as agent for the Term Lenders, had a fundamental duty not to take improper actions that would damage the Term Lenders' interests in connection with

the Term Loan. This included a fundamental responsibility, before causing the filing of a termination statement, to read the statement and understand which security interests it would be releasing and why. JPMorgan also had fundamental obligations: (i) not to take actions outside the scope of its authority as agent; (ii) to follow the instructions of its principals; (iii) promptly to notify its principals if it breached either of the preceding duties, in order to give its principals an opportunity to mitigate or cure the consequences of the breach; (iv) not to act adversely to its principals with respect to the subject matter of the agency; and (v) to act consistently with the covenant of good faith and fair dealing in the performance of the Term Loan agreements, including by not taking actions that would have the effect of destroying or injuring the rights of the Term Lenders to receive the benefits of the agreements.

23. JPMorgan also undertook to serve as the Secured Party of Record for the Term Loan UCC Financing Statements that were filed to perfect the security interests in the Collateral. All 28 UCC-1 financing statements, including the Main Term Loan UCC-1, named “JPMorgan Chase Bank, N.A. as Administrative Agent” as the Secured Party of Record. As was apparent from the face of the Main Term Loan UCC-1, the reference to JPMorgan as Secured Party of Record was to JPMorgan as “Agent” for the principals/lenders in the Term Loan. An annex to the Main Term Loan UCC-1 referenced, among other things, the Term Loan Agreement dated November 29, 2006.

24. By permitting JPMorgan to be named as Secured Party of Record for the Term Loan, and as the party that would be granted the security interest for the benefit of all Secured Parties, the Term Lenders entrusted JPMorgan with the security interests in the Collateral.



25. As Secured Party of Record, JPMorgan had a fundamental obligation to refrain from taking wrongful actions that would have the effect of destroying the perfection of the security interests for which it was Secured Party of Record. JPMorgan also had a duty, as Secured Party of Record, to act competently and with appropriate care before taking actions that could have the effect of damaging the interests of the other Secured Parties.

26. Cross-Claimants are Lenders under the Term Loan Agreement and express third-party beneficiaries of the Collateral Agreement, and also were principals to the agency relationship in which JPMorgan served as agent.

27. JPMorgan's obligations under the Term Loan Agreement and the Collateral Agreement are valid and enforceable obligations.

28. Cross-Claimants have performed all conditions precedent to JPMorgan's obligations under the relevant agreements.

### **The Synthetic Lease**

29. In 2001, five years before the Term Loan was issued, JPMorgan helped arrange the Synthetic Lease, which involved a \$300 million financing of real properties in various states.

30. The Chase Manhattan Bank ("Chase Manhattan") was named to serve as Administrative Agent for the Synthetic Lease. In or about 2001, JPMorgan & Co. merged with Chase Manhattan to form JPMorgan. Upon information and belief, JPMorgan took over Chase Manhattan's duties as Administrative Agent under the Synthetic Lease, and acted as Secured Party of Record for the Synthetic Lease.

31. The Synthetic Lease was unrelated to the Term Loan. It involved a different set of principals on whose behalf Chase Manhattan and, later, JPMorgan, acted as Administrative Agent. The Synthetic Lease agreements did not purport to grant JPMorgan any

authority to take actions in connection with that transaction that would affect any party's interests under the Term Loan. On the contrary, the Synthetic Lease documentation specifically limited JPMorgan's authority, including in connection with the termination of any financing statements, solely to properties and matters encompassed by the Synthetic Lease transaction.

32. General Motors's obligations under the Synthetic Lease were secured by liens on various General Motors properties identified in the Synthetic Lease agreements. This collateral consisted largely of real estate and was entirely separate from the assets that served as collateral under the Term Loan. At the time of the termination of the Synthetic Lease, financing statements and other documents for the Synthetic Lease related to properties in Michigan, Indiana, and Illinois were on file with the Delaware Secretary of State and various recording offices in Michigan.

33. In order to perfect the liens for the Synthetic Lease, JPMorgan filed UCC-1 financing statements with a variety of recording offices. At the time of the termination of the Synthetic Lease, three relevant UCC-1 financing statements were on file in Delaware. Two were dated April 12, 2002, and pertained to real property and related collateral in Marion County, Indiana and Will County, Illinois (one was filed against General Motors as the debtor, and the other was filed against Auto Facilities Real Estate Trust 2001-1 as the lessor). The third was filed in 2007 against the lessor, and related to property in Detroit, Michigan. All of the statements identified the secured party of record as: "JPMorgan Chase Bank, as Administrative Agent" or "JPMorgan Chase Bank, N.A. as Administrative Agent." The phrase "as Administrative Agent" in these UCC-1 statements referred to JPMorgan in its capacity as Administrative Agent under the Synthetic Lease documents, and specifically as "Agent" for the principals/investors in the Synthetic Lease.

34. Upon information and belief, Duker was the JPMorgan employee/officer with primary responsibility for ensuring the performance of JPMorgan's obligations under the Synthetic Lease.

**JPMorgan Recklessly Terminates the Main Term Loan UCC-1**

35. The Synthetic Lease was scheduled to mature on October 31, 2008. On or about October 1, 2008, General Motors informed Duker that General Motors intended to pay the amounts due under the Synthetic Lease. Duker also was personally familiar with the Term Loan, and knew that General Motors was not repaying the Term Loan at that time.

36. General Motors retained the law firm of Mayer Brown LLP ("Mayer Brown") in connection with the repayment of the Synthetic Lease. Upon information and belief, Mayer Brown was not retained to provide advice or representation to General Motors, JPMorgan, or any other party in connection with the Term Loan.

37. JPMorgan, for its part, retained the law firm of Simpson Thacher & Bartlett LLP ("Simpson") in connection with the Synthetic Lease. Simpson was retained to, and did, represent JPMorgan in this transaction solely in JPMorgan's capacity as Administrative Agent under the Synthetic Lease. JPMorgan did not retain Simpson or seek Simpson's advice in connection with the Term Loan, nor did Simpson provide any legal representation or advice to JPMorgan with respect to its obligations or actions under the Term Loan. JPMorgan did not delegate to Simpson any of JPMorgan's responsibilities as Administrative Agent under the Term Loan, nor did it delegate its responsibilities as Secured Party of Record for the Term Lenders.

38. As Secured Party of Record for the Synthetic Lease transaction, JPMorgan was responsible for terminating any relevant UCC-1 financing statements supporting the Synthetic Lease upon repayment of the debt involved in the transaction.

39. General Motors and JPMorgan agreed that General Motors (including its lawyers) would prepare drafts of the documentation necessary to terminate the Synthetic Lease.

40. JPMorgan knew that if it caused an incorrect UCC-3 termination statement to be filed under its name, such as a termination statement relating to the Term Loan instead of the Synthetic Lease, such an error could result in devastating financial losses to the Term Lenders:

(a) JPMorgan knew that it was serving as Administrative Agent and Secured Party of Record for the Secured Parties named in the Synthetic Lease agreements.

(b) JPMorgan knew that it also was designated as Administrative Agent and Secured Party of Record for the different set of Secured Parties (including Cross-Claimants) associated with the Term Loan.

(c) JPMorgan knew that UCC-1 financing statements had been filed with the Delaware Secretary of State in connection with both the Term Loan and the Synthetic Lease transactions.

(d) JPMorgan knew that the Term Loan UCC Financing Statements filed in Delaware identified the secured party of record as “JPMorgan Chase Bank, N.A., as Administrative Agent,” meaning Administrative Agent in connection with the Term Loan.

(e) JPMorgan knew that the UCC-1 financing statements filed in Delaware in connection with the Synthetic Lease identified the secured party of record as “JPMorgan Chase Bank, as Administrative Agent” or “JPMorgan Chase Bank, N.A. as Administrative Agent,” in each case meaning Administrative Agent in connection with the Synthetic Lease.

(f) Upon information and belief, JPMorgan never informed Simpson of the risk created by the confluence of facts set out in Paragraphs 40(a) through (e).

(g) JPMorgan knew that, in the event of a General Motors bankruptcy, a termination statement purporting to terminate UCC-1 financing statements for collateral supporting the Term Loan might be advanced by parties to any ensuing General Motors bankruptcy as a reason to disregard the Term Lenders' security interest in the Collateral supporting the Term Loan.

(h) JPMorgan also knew, in October 2008, that there was a significant risk that General Motors would file for bankruptcy protection in the imminent future. Indeed, on October 10, 2008, while General Motors was preparing the closing documents for the Synthetic Lease payoff, a representative of Wells Fargo emailed Duker, expressing concern about General Motors's financial condition, and inquiring into the status of the Collateral securing the Term Loan. The email noted that General Motors's stock had fallen "~84%" and that General Motors's bonds had "seen a similar decline." The Wells Fargo representative questioned whether the value of the Collateral was sufficient to ensure repayment of the Term Loan, and inquired whether the Term Lenders should seek to reduce their exposure to General Motors or demand additional collateral. This exchange reminded JPMorgan and Duker, if any reminder were needed, that it was imperative to protect the security interest that JPMorgan held as Secured Party of Record for the benefit of the Term Lenders.

41. Nevertheless, and despite the serious consequences of any error as set out above, neither Duker nor anyone else at JPMorgan took any steps at all to ensure that the actions taken in connection with the repayment of the Synthetic Lease did not adversely affect the security interests of the Term Lenders.

42. In fact, JPMorgan made a colossal error in connection with the Synthetic Lease termination. General Motors and Mayer Brown's drafts incorrectly identified the Main Term Loan UCC-1 as one of the financing statements to be terminated in connection with the payoff of the Synthetic Lease. Mayer Brown then sent to Simpson, in connection with the payoff of the Synthetic Lease, draft closing checklists that identified the Main Term Loan UCC-1 as one of the UCC-1 financing statements to be terminated at the time of the closing of the Synthetic Lease payoff. Mayer Brown also sent draft closing documents to Simpson, including a draft of the improper Termination Statement. Simpson forwarded the checklists and the draft documents including the Termination Statement to Duker at JPMorgan. General Motors also circulated a draft of escrow and recording instructions with respect to the Synthetic Lease termination. The escrow instructions provided that, immediately following confirmation that the applicable conditions precedent had been satisfied and the closing of the termination of the Synthetic Lease, the escrow agent would deliver to General Motors's counsel the UCC-3 termination statements (including the improper Termination Statement), thus allowing them to be filed with the relevant recording offices.

43. Upon information and belief, despite its full awareness of the significant consequences of the filing of a UCC-3, as well as the risks presented by its serving as administrative agents and secured parties of record on multiple credit facilities, at no point during this process did JPMorgan take any steps to determine for itself whether the draft documents provided by General Motors and its counsel had identified the correct financing statements for termination in connection with the Synthetic Lease. Nor, upon information and belief, did JPMorgan take any steps (a) to ensure that no other financing statements were scheduled for termination, including the Main Term Loan UCC-1 that is at issue in this action; or

(b) to determine what UCC-1 financing statements it was causing to be terminated. Because JPMorgan undertook to serve as Secured Party of Record on the UCC-1 financing statements for the Term Loan, it was understood that any UCC-3 termination statement amending those UCC-1 statements would be filed with JPMorgan's name on it. JPMorgan accordingly assumed a duty to read and understand any UCC-3 statements filed in its name, including any statements prepared by General Motors. Instead of complying with this obligation, JPMorgan, in its capacity as Administrative Agent for the Synthetic Lease, caused the filing of UCC-3 termination statements without taking any steps to verify that those UCC-3 termination statements related only to the Synthetic Lease that was being terminated.

44. On or about October 30, 2008, the Termination Statement was filed with the Delaware Secretary of State. The Termination Statement was filed at the same time as termination statements pertaining to the Synthetic Lease.

45. JPMorgan has admitted that, in connection with the communications and acts described above relating to the preparation and filing of the Termination Statement, General Motors was acting as JPMorgan's agent. Under the circumstances set forth above, JPMorgan did not exercise reasonable care in so authorizing General Motors.

46. JPMorgan's actions did not constitute "authorization" within the meaning of the UCC. Among other reasons, JPMorgan was not acting in its capacity as Administrative Agent for the Term Lenders, and therefore was not acting as Secured Party of Record under the Main Term Loan UCC-1, when it caused the Termination Statement to be filed. JPMorgan lacked the power, in its capacity as Administrative Agent and Secured Party of Record for the Synthetic Lease, to authorize the filing of any termination statements related to the Term Loan. When JPMorgan caused the Termination Statement to be filed, it was acting beyond the

authority delegated to it under the Term Loan Agreement, and contrary to the Term Loan Agreement's express contractual obligations and instructions provided by its principals, the Term Lenders.

47. Nonetheless, the AAT has contended that JPMorgan "authorized" the filing of the Termination Statement. To the extent that JPMorgan's actions constituted "authorization" or otherwise impaired the perfection of Cross-Claimants' security for the Term Loan, JPMorgan must indemnify Cross-Claimants and hold them harmless.

48. JPMorgan's actions with respect to the Termination Statement under the circumstances described above inherently constituted recklessness and gross negligence. In addition, JPMorgan's actions were wrongful because, among other reasons:

(a) JPMorgan knew that an erroneous filing could be used by General Motors's creditors in a General Motors bankruptcy in an attempt to disregard or displace the Term Lenders' security interests, and thus could seriously impair the Term Lenders' right to repayment.

(b) JPMorgan knew that, at the same time it was acting as Administrative Agent for the benefit of the Synthetic Lease syndicate in connection with the termination of the Synthetic Lease, it had continuing responsibilities as Administrative Agent for the Term Lenders in connection with the Term Loan, and that General Motors was not at that time paying off the Term Loan.

(c) As of October 2008, JPMorgan knew that General Motors was experiencing serious financial difficulties, that there was a significant likelihood that General Motors would file for bankruptcy protection, and that the risks associated with a UCC filing mistake in that context would be particularly severe.



(d) Nevertheless, JPMorgan implemented no procedures and took no steps to ensure that the termination statements filed in connection with the payoff of the Synthetic Lease actually pertained to the Synthetic Lease, and did not instead terminate the financing statements for other financings, including the Main Term Loan UCC-1.

(e) The costs of employing such procedures would have been trivial in comparison to the devastating potential consequences associated with an erroneous filing. JPMorgan had a duty to employ such procedures.

(f) JPMorgan also ignored red flags indicating that the draft UCC-3 termination statement related to Collateral for the Term Loan. On October 15, 2008, General Motors's lawyers sent JPMorgan's lawyers a draft closing checklist along with a collection of draft UCC filings, all of which, except for the draft Termination Statement, pertained to real property. That same day, JPMorgan's lawyers forwarded the checklist and the draft documents to Duker at JPMorgan. Under the heading "Termination of UCCs (central, DE filings)," the draft checklist listed a "financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/2006)." This entry on the checklist made it obvious that an error had occurred because:

(i) The Synthetic Lease was a *real estate* transaction, and the collateral securing that loan consisted of real estate and fixtures relating to that real estate. The references to "equipment" at "U.S. manufacturing facilities"—without any corresponding reference to real estate—were sufficient to alert JPMorgan to the fact that the draft termination statement did not relate to the collateral for the Synthetic Lease—and instead related to collateral that secured the Term Loan. Duker, the person to whom the drafts were sent, was responsible for managing both the Synthetic Lease and the Term Loan, and was well aware of the difference

between the collateral securing those two obligations. Indeed, just five days before he received the checklist, Duker himself informed Wells Fargo that the collateral included “M&E/special tools” (referring, upon information and belief, to “machinery and equipment”) and that “property is not part of the collateral.”

(ii) The reference in the draft checklist to “file date 11/30/2006” indicated that the underlying UCC-1 to be terminated was filed on November 30, 2006, the day after the signing of the Term Loan. This was another red flag, because JPMorgan knew that the Term Loan closed at the end of November 2006 and therefore should have known that this reference was to a UCC-1 relating to the Term Loan and not to a UCC-1 relating to the Synthetic Lease.

(g) On October 15, 2008—the *very same day* Duker received the draft checklist—Wells Fargo provided yet another reminder of the importance of preserving, for the benefit of the Term Lenders, the security interest in General Motors’s machinery, equipment, and special tools. That day, the same Wells Fargo representative who had sent the October 10 email expressing concern about the machinery and equipment collateral securing the Term Loan forwarded that same email exchange once again to Duker, asking Duker to “give me a call to discuss; it’s not urgent but nonetheless important.” Yet neither Duker nor anybody else at JPMorgan took any steps to avoid endangering the Term Lenders’ security interest.

(h) Rather, despite all these warning signs, Duker and JPMorgan caused the filing of the Termination Statement.

(i) (i) The Second Circuit Decision, which is binding as against JPMorgan, stated that “JPMorgan . . . knew that, upon the closing of the Synthetic Lease transaction, Mayer Brown was going to file the termination statement that identified the Main

Term Loan UCC-1 for termination” and further stated that “JPMorgan reviewed and assented to the filing of that statement.”

(j) JPMorgan’s conduct showed a reckless disregard for the interests of the Term Lenders that it was required to serve, and reflected a failure to take even slight care.

49. Upon information and belief, JPMorgan—which held itself out as the industry leader in the field of syndicated lending—often simultaneously served as administrative agent and secured party of record for many different syndicated loan transactions, including multiple transactions in Delaware with respect to the same debtor. In so doing, JPMorgan employed a practice of using identical or virtually identical language to identify itself on UCC filings without specifying the transaction to which particular UCC filings related—i.e., without including identifying language such as “As Administrative Agent Under That Certain Term Loan Dated . . . .” This practice of using the same capacity designation for Delaware filings affecting different transactions created a grave risk of an erroneous filing. Having created this risk, JPMorgan had a duty to adopt and follow procedures that would manage the multiple roles that JPMorgan was playing in a manner that would prevent such an error. JPMorgan either failed entirely to adopt such procedures, or failed to follow them when it caused the filing of the Termination Statement. In either case, its conduct evinced recklessness and gross negligence.

50. JPMorgan’s actions described above were not lawfully taken.

### **JPMorgan Compounds Its Breach of Duty With Additional Breaches In and After 2009**

#### ***Acts and Omissions Prior to General Motors’s Bankruptcy Filing***

51. By virtue of both its status as Agent for the Term Lenders and its responsibilities as Secured Party of Record for the Term Lenders, JPMorgan had a duty, not waived or diminished by the Term Loan Agreement, promptly to notify the principals of its transgression of authority and to take any necessary actions to assist the principals in remedying

any injury caused by that transgression—including, in this case, by alerting Cross-Claimants to the need to file a new UCC-1 financing statement and then undertaking to file such a statement.

52. Despite this duty, JPMorgan failed promptly to alert Cross-Claimants to its error or otherwise take steps either to enable Cross-Claimants to take action to protect their interests as a result of JPMorgan's transgression, or to rectify the problem promptly itself.

53. Upon information and belief, in January 2009, General Motors informed JPMorgan that its financial situation had further deteriorated. General Motors told JPMorgan that its auditors were going to include a "going concern" qualification in connection with their audit of General Motors's financial statements, and that General Motors therefore would not be in compliance with the Term Loan Agreement. A "going concern" qualification is necessary only when there is substantial doubt about an entity's ability to avoid bankruptcy or otherwise continue its operations.

54. General Motors and JPMorgan negotiated an amendment to the Term Loan Agreement that, among other things, prevented General Motors from defaulting on the Term Loan due to the "going concern" qualification. One of the key assurances provided to the Term Lenders in exchange for the amendment was an increase in the collateral coverage ratio, an assurance that should have underscored once again for JPMorgan the importance of the collateral and the security interests in that collateral. For helping General Motors avoid default, JPMorgan was paid a \$6 million fee.

55. Once the General Motors bankruptcy became likely, it would have been standard practice for JPMorgan, upon information and belief, or in any event for an entity in JPMorgan's position, to conduct a thorough review of relevant UCC filings associated with General Motors's secured loans. Upon information and belief, JPMorgan did undertake to

perform such a review of the UCC filings for the Term Loan in the first half of 2009. Even a rudimentary search would have uncovered the Termination Statement. Thus, upon information and belief, JPMorgan either (i) discovered the Termination Statement or indicia thereof and did nothing, or (ii) conducted the search in such a careless and reckless manner that it failed to identify its obvious error. Had it exercised even minimal care, JPMorgan could have sought to correct its error by (i) filing (or demanding that General Motors file) a new UCC-1 financing statement for the Term Loan; and/or (ii) filing (or demanding that General Motors file) a correction statement that would have provided notice to interested parties that the Termination Statement was wrongfully filed and unreliable.

56. JPMorgan knew of its error no later than June 15, 2009. Yet, despite that knowledge, after that date, JPMorgan sold interests in the Term Loan to certain Cross-Claimants.

#### ***The Adversary Proceeding***

57. General Motors filed for bankruptcy protection on June 1, 2009.

58. On June 30, 2009, the Term Lenders received all interest and principal outstanding under the Term Loan Agreement from the proceeds of the DIP Credit Facility (as defined in the DIP Order) approved by the Bankruptcy Court on June 25, 2009.

59. As initially filed with the Court on June 1, 2009, the proposed DIP Order contained a broad release of the Term Lenders. On or before June 25, 2009, the proposed release language was modified to reserve certain potential claims relating to the perfection of first-priority liens with respect to the Term Loan and other senior secured debt (the “Prepetition Secured Facilities”). Along with this modification, new language was added, stating that it was “understood that the respective administrative and collateral agents for the Prepetition Senior Facilities shall have no responsibility or liability for amounts paid to any Prepetition Senior Facilities Secured Parties and such agents shall be exculpated for any and all such liabilities,

excluding only such funds as are retained by each such agent solely in its respective role as a lender.” In other words, the modified proposed DIP Order purported to exculpate JPMorgan, in its capacity as Administrative Agent, from any claims by the Committee seeking to recover funds paid to the other Term Lenders. Upon information and belief, the modified release language was negotiated between JPMorgan and the Committee after JPMorgan disclosed to the Committee its role in the filing of the Termination Statement, and the quoted language was negotiated for the purpose of minimizing the risk to JPMorgan while leaving the innocent Term Lenders exposed. The modified proposed DIP Order was submitted to the Bankruptcy Court on June 25, 2009, without any disclosure to the Bankruptcy Court concerning the circumstances giving rise to this provision.

60. On July 31, 2009, the Committee initiated this adversary proceeding against JPMorgan and the Term Lenders, including Cross-Claimants. The complaint alleged that, due to the filing of the Termination Statement, the Term Lenders were not protected by a perfected security interest in the collateral covered by the Main Term Loan UCC-1. The complaint further alleged that the remaining collateral securing the Term Loan had negligible value, and that the Term Lenders should not have been treated as secured creditors under the DIP Order. The complaint demanded from certain of the Term Lenders<sup>5</sup> a substantial portion of the \$1.5 billion they received in repayment of the Term Loan. The AAT served the complaint on JPMorgan in 2009, but did not serve the Term Lenders, including Cross-Claimants, until 2015.

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<sup>5</sup> Not all Cross-Claimants were named in the original Complaint. Nothing herein should be deemed to waive any rights or defenses of any Cross-Claimant, including rights or defenses based on the failure of the original complaint to name some Cross-Claimants.

61. Specifically, on or before October 6, 2009, following the filing of the initial complaint, JPMorgan sought and obtained an agreement from the AAT to request that the Bankruptcy Court allow a delay of the service of process on the Term Lenders.

62. Critically, in presenting this proposal to the Bankruptcy Court, JPMorgan's counsel made a point of telling the Bankruptcy Court that they were appearing for JPMorgan both individually "and as administrative agent." In response to this proposal, the Bankruptcy Court specifically asked JPMorgan's counsel whether JPMorgan had some of its own money in the Term Loan facility, and JPMorgan's counsel responded in the affirmative. The clear purpose of the Bankruptcy Court's inquiry was to obtain assurance that JPMorgan's interests were aligned with the Term Lenders who were unrepresented in the court, that JPMorgan would act in their interests, and that the interests of the unserved parties thus would not be prejudiced by the delay in service.

63. The stated rationale for the requested delay in service in 2009 was that the Term Lenders did not have discoverable information relevant to the events surrounding the filing of the Termination Statement, and that it accordingly was not necessary to join them at the discovery stage. But, in 2010, JPMorgan and the AAT requested further extensions of the deadline to complete service on the Term Lenders until after the Bankruptcy Court ruled on motions for summary judgment—extensions that went far beyond the original rationale offered to the Bankruptcy Court. By asking the Bankruptcy Court to allow JPMorgan and the AAT to litigate potentially dispositive motions without the participation of the Term Lenders, JPMorgan implicitly represented that it would act to protect the interests of the Term Lenders in the litigation. As detailed below, it did not do so, but instead, laboring under a conflict of interest, it sought to protect its own interests at the expense of the interests of the Term Lenders.

64. In 2013, following the Bankruptcy Court's order granting summary judgment to JPMorgan and shortly after the filing of a notice of appeal, the AAT, with JPMorgan's consent, requested yet another extension of the deadline in which to complete service. Upon information and belief, by this point it was apparent to JPMorgan and its counsel that there was a reasonable prospect that the appellate process would extend more than six years from the 2008 date of the original breach of duty by JPMorgan, and that if the appellate ruling were to be adverse, continued delay in service might facilitate efforts by JPMorgan to argue that it had "run out the clock" on the statute of limitations for any claim that the Term Lenders might seek to bring against it. JPMorgan had a duty to disclose to the Bankruptcy Court that JPMorgan might use further extensions of time as a basis to argue that the statute of limitations had run on any such cross-claims, and thus that further extensions could prejudice the Term Lenders if a timeliness argument by JPMorgan were to prevail.

65. Neither at the time of the original stipulation—nor on the other occasions over the ensuing six years when JPMorgan and the AAT sought further extensions of the time to serve the Term Lenders—did JPMorgan disclose to the Bankruptcy Court that JPMorgan might later seek to use the delay in service of the Term Lenders as a basis to insulate itself from liability to the Term Lenders for its own breaches of duty. Had JPMorgan disclosed the possibility that it would use the extensions in an effort to prejudice the Term Lenders or that it intended to act solely in its own interests even when those interests conflicted with those of the absent Term Lenders, it is difficult to imagine that the Bankruptcy Court would have granted the extensions.

66. But, in fact, JPMorgan engaged in a litigation strategy that was calculated to protect its own interests, even if that meant acting to the detriment of the Term Lenders.



(a) In litigating the effectiveness of the Termination Statement, JPMorgan failed to assert arguments and defenses that would have protected the Term Lenders but compromised JPMorgan's own position vis-à-vis the Term Lenders. For example, JPMorgan failed to assert as an independent basis for invalidity that JPMorgan, in causing the filing, acted wholly outside the authority granted to it by the Term Lenders and, indeed, in violation of the Term Loan Agreement and its duties as the agent of the Term Lenders.

(b) JPMorgan also agreed with the AAT to the entry of a stipulation, buried in a scheduling order, that purported to limit the right of the Term Lenders to take discovery into the filing of the Termination Statement beyond that conducted by the AAT and JPMorgan. Yet, in submitting this stipulation to the Bankruptcy Court for approval, JPMorgan did not disclose that its incentives for limiting discovery were tainted by a conflict of interest: just as the AAT did not have an interest in pursuing discovery establishing that JPMorgan's acts in connection with the Termination Statement were unlawful, unauthorized by the Term Lenders, and contrary to the duties that JPMorgan owed the Term Lenders, neither did JPMorgan have an interest in pursuing such discovery. JPMorgan now has taken the position that this stipulation precludes Cross-Claimants from taking discovery concerning JPMorgan's misconduct. JPMorgan did not disclose to the Bankruptcy Court that it would attempt to use this stipulation as part of a strategy to avoid responsibility for its own wrongdoing.

(c) To the extent that JPMorgan did communicate regarding the adversary proceeding to some Term Lenders, it downplayed the risk to the Term Lenders, minimized its own transgressions of duty in the filing of the Termination Statement, and failed to disclose that it was acting under a conflict of interest. The Term Lenders, to the extent they were aware of the adversary proceeding at all, thus were given reason to believe that JPMorgan would

put the interests of the Term Lenders ahead of its own interests or, at a minimum, clearly advise the Term Lenders that its interests conflicted with those of their putative agent. JPMorgan did neither, and instead used the few communications it had with some of the Term Lenders to lull them into inaction. For example, JPMorgan assured certain of the Term Lenders that the purpose of the service extensions was to promote “efficiency,” without disclosing that JPMorgan intended to use the passage of time caused by its own proposals to delay service to argue that any claims by the Term Lenders against JPMorgan were untimely.

(d) As the adversary proceeding has unfolded, JPMorgan’s assurances to the Bankruptcy Court and to certain of the Term Lenders have not been borne out. JPMorgan has indicated that it intends to try to use the period of delay that it secured from the Bankruptcy Court to support a statute of limitations defense against any cross-claims asserted by the Term Lenders in this action. Such an argument necessarily would fail because each and every cause of action asserted herein is timely under settled law. But for JPMorgan even to attempt such a bad-faith tactic is contrary to its obligations to the Term Lenders and inconsistent with the implicit representations that JPMorgan made to the Bankruptcy Court in requesting the extensions of time in the first instance.

67. Following the Second Circuit Decision, the AAT began serving summonses on Cross-Claimants.

68. Since the Second Circuit Decision, JPMorgan has refused to take responsibility for the consequences of its actions and has denied that it has any responsibility to reimburse, indemnify, and hold harmless Cross-Claimants in this case.

## **FIRST CLAIM FOR RELIEF**

### **Declaratory Relief**

69. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 68, inclusive.

70. An actual and justiciable controversy now exists between the parties as to JPMorgan's obligation to reimburse, indemnify, and hold harmless Cross-Claimants for any liabilities or losses that Cross-Claimants incur in this action.

71. As detailed in this Cross-Complaint, Cross-Claimants contend that, by virtue of JPMorgan's wrongful conduct, JPMorgan is obligated to reimburse, indemnify, and hold Cross-Claimants harmless for any liabilities to the AAT in this adversary proceeding. JPMorgan has disputed that it has such an obligation.

72. Cross-Claimants desire a judicial determination of Cross-Claimants' rights and JPMorgan's obligations.

## **SECOND CLAIM FOR RELIEF**

### **Indemnification**

73. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 72, inclusive.

74. If the Termination Statement is deemed effective as against Cross-Claimants, and if Cross-Claimants incur resulting liabilities to the AAT, such liabilities are the proximate result of JPMorgan's breaches of duty and wrongful conduct.

75. On certain occasions, JPMorgan purchased interests in the Term Loan from certain Cross-Claimants.

76. The agent-principal relationship, the terms of the parties' agreements (including but not limited to agreements under which JPMorgan purchased Term Loan interests

from certain Cross-Claimants), and/or JPMorgan's wrongful conduct create an obligation for JPMorgan to indemnify Cross-Claimants for any liabilities or losses that Cross-Claimants incur in this avoidance action, whether as a result of the breaches described above or as a result of any other breaches of duty in connection with the creation, perfection, and preservation of any security interest.

### **THIRD CLAIM FOR RELIEF**

#### **Breach of Contract**

77. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 76, inclusive.

78. The Term Loan Agreement prohibited JPMorgan from filing or authorizing others to file termination statements relating to the Collateral unless either: (i) the Term Loan had been repaid in full; or (ii) the Term Lenders had consented in writing to the filing. Neither of these conditions had occurred when JPMorgan caused the Termination Statement to be filed.

79. To the extent Cross-Claimants incur liabilities to the AAT, any such losses are the natural, probable, and foreseeable consequences of JPMorgan's breach of contract, and JPMorgan should be required to reimburse Cross-Claimants for those losses.

### **FOURTH CLAIM FOR RELIEF**

#### **Breach of Obligations as Agent**

80. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 79, inclusive.

81. As alleged above, JPMorgan assumed certain agency roles and duties.

82. By causing the Termination Statement to be filed, JPMorgan acted wholly outside of its authority as agent and in direct contravention of the express instructions of its principals.

83. JPMorgan further breached its obligation to rectify its error promptly.

84. JPMorgan further breached its obligations to the Term Lenders through its other actions set out above, including but not limited to its conduct in 2009 and in the course of litigating this adversary proceeding.

85. To the extent that Cross-Claimants are held liable to the AAT in this action, such losses are a direct and proximate result of JPMorgan's breaches of duty.

#### **FIFTH CLAIM FOR RELIEF**

##### **Breach of Fiduciary Duty**

86. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 85, inclusive.

87. As alleged above, JPMorgan assumed certain unwaivable fiduciary duties.

88. By its actions as alleged above, JPMorgan acted contrary to its fiduciary duties to the Term Lenders.

89. To the extent that Cross-Claimants are held liable to the AAT in this action, such losses are a direct and proximate result of JPMorgan's breaches of duty.

#### **SIXTH CLAIM FOR RELIEF**

##### **Injurious Falsehood**

90. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 89, inclusive.

91. To the extent that JPMorgan authorized the filing of the Termination Statement, JPMorgan made a false communication about the Term Lenders' beneficially-owned

security interest by representing that the Term Loan had been paid off, that the Term Lenders no longer had a security interest in the Collateral, and/or that the Term Lenders had “authorized” the release of the security interest or the termination of the perfection of a portion of the security interest. JPMorgan made the communication either with knowledge that it was false, or recklessly and without regard to its consequences.

92. A reasonable person would have anticipated that damage would flow from the false statement.

93. If Cross-Claimants incur any resulting liability to the AAT, the full amount of such liability will constitute special damages that are the direct consequence of JPMorgan’s wrongful conduct.

#### **SEVENTH CLAIM FOR RELIEF**

##### **Injury to Property**

94. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 93, inclusive.

95. To the extent that JPMorgan authorized the filing of the Termination Statement, JPMorgan damaged the Term Lenders’ property interests in the Collateral securing the Term Loan through an actionable wrong. JPMorgan did so in its capacity as Administrative Agent under the Synthetic Lease.

96. If Cross-Claimants incur any resulting liability to the AAT, such pecuniary losses will be a direct consequence of JPMorgan’s wrongful conduct.

#### **EIGHTH CLAIM FOR RELIEF**

##### **Negligence**

97. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 96, inclusive.

98. As alleged above, JPMorgan voluntarily assumed a duty to handle the Term Lenders' security interests with due care.

99. By the actions alleged above, JPMorgan assumed a duty of care independent of its contractual obligations.

100. By the actions alleged above, JPMorgan breached those duties. To the extent that Cross-Claimants incur any resulting liability to the AAT, such losses are a direct and proximate result of JPMorgan's negligence.

### **NINTH CLAIM FOR RELIEF**

#### **Noncompliance with the UCC (Section 9-625)**

101. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraph 1 through 100, inclusive.

102. In committing the acts alleged above, JPMorgan was not acting in its capacity as Administrative Agent for the Term Loan. Rather, it was acting wholly outside its authority under the Term Loan, and exclusively in its capacity as Administrative Agent for the Synthetic Lease.

103. JPMorgan, in its capacity as Administrative Agent for the Synthetic Lease, was not the secured party of record for the Term Loan.

104. JPMorgan's actions as described above had the effect of causing a termination statement to be filed that was completely unauthorized by the relevant principals.

105. JPMorgan's acts as alleged above failed to comply with UCC Section 9-509(d) because JPMorgan was not acting in its capacity as the Secured Party of Record for the Term Loan. JPMorgan, in its capacity as Secured Party of Record for the Synthetic Lease, was a stranger to the Term Loan and was not permitted under the UCC to authorize a filing related to it.

106. JPMorgan's conduct may cause loss to the Term Lenders. To the extent that Cross-Claimants incur any liability to the AAT, such losses are a direct and proximate result of JPMorgan's noncompliance with the UCC.

#### **TENTH CLAIM FOR RELIEF**

##### **Breach of the Covenant of Good Faith and Fair Dealing**

107. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 106, inclusive.

108. Implicit in all of the parties' agreements relating to the Term Loan was a covenant to exercise good faith and fair dealing in the performance of the agreements. Encompassed within that covenant was an obligation that JPMorgan not take actions that would have the effect of destroying or injuring the rights of the Term Lenders to receive the fruits of the contract.

109. One of the central benefits of the Term Loan agreements from the standpoint of the Term Lenders was their right and expectation, in connection with their loan of \$1.5 billion to a distressed entity such as General Motors, to the status of secured creditors under the terms of the Term Loan agreements. Among other things, the Term Lenders had a reasonable expectation that, in exchange for granting that loan, the Term Lenders would receive the status of secured creditors with a perfected, first-priority lien on billions of dollars' worth of General Motors's property. The Term Lenders also had a reasonable expectation that JPMorgan, in exercising its functions as Administrative Agent and Secured Party of Record, would not take action that would jeopardize the Term Lenders' status as secured creditors.

110. JPMorgan's actions as alleged above constituted a reckless disregard for the Term Lenders' rights to their benefits under the Term Loan agreements, including their status



as secured creditors. By these actions, JPMorgan breached the covenant of good faith and fair dealing implied in the Term Loan agreements.

111. Following the improper filing of the Termination Statement, JPMorgan again breached the covenant of good faith and fair dealing through its additional actions alleged above, which had the effect of potentially destroying or injuring the Term Lenders' right to receive the benefits of the Term Loan agreements, including the benefit of maintaining their status as secured creditors as General Motors approached and entered bankruptcy and the right to the services of a faithful agent.

112. To the extent Cross-Claimants incur liabilities to the AAT, any such losses are the natural, probable, and foreseeable consequence of JPMorgan's breaches of the covenant of good faith and fair dealing, and JPMorgan should be required to reimburse Cross-Claimants for those losses.

### **ELEVENTH CLAIM FOR RELIEF**

#### **Equitable Subordination**

113. Cross-Claimants reallege and incorporate by reference as though set forth in full the allegations in paragraphs 1 through 112, inclusive.

114. JPMorgan has engaged in inequitable conduct, including the conduct described in this Cross-Complaint.

115. JPMorgan's inequitable conduct has caused a direct and particularized injury to Cross-Claimants, including, but not limited to, Cross-Claimants: (i) having continued to extend credit to the Debtors without knowledge of the Termination Statement; and (ii) being at risk of having some or all of the payments made on account of the Cross-Claimants' secured claims avoided.

116. Under principles of equitable subordination, all claims that have been or may be asserted against the Debtors by, on behalf of, or for the benefit of JPMorgan in any capacity should be subordinated for purposes of distribution, pursuant to sections 510(c)(1) and 105(a) of the Bankruptcy Code, to the claims of Cross-Claimants.

117. Equitable subordination as requested herein is consistent with the provisions and purposes of the Bankruptcy Code.

**PRAYER FOR RELIEF**

WHEREFORE, Cross-Claimants pray for relief as follows:

- A. For an order requiring JPMorgan to reimburse, indemnify, and hold harmless Cross-Claimants for any liabilities or losses they incur to the AAT in this adversary proceeding;
- B. For a declaration that JPMorgan is required to reimburse, indemnify, and hold harmless Cross-Claimants for any liabilities or losses they incur to the AAT in this adversary proceeding;
- C. For costs of suit and attorney fees, to the extent permitted by law;
- D. For pre- and post-judgment interest as authorized by law; and
- E. For such other relief as the court may deem proper.

Dated: November 16, 2015

Respectfully submitted,

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*Attorneys for Term Loan Lenders\**

*[\*complete list of represented Defendants  
listed in Appendix A]*

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<sup>6</sup> Excluding matters relating to Northern Trust Investments, Inc., as Named Fiduciary to the Central States, Southeast, and Southwest Areas Pension Fund.

**APPENDIX A**

Ares Enhanced Loan Investment Strategy III, Ltd.; Ares Enhanced Loan Investment Strategy IR, Ltd.; Ares IIR/IVR CLO Ltd.; Ares VIR CLO Ltd.; Ares VR CLO Ltd.; Ares XI CLO Ltd.; Atrium IV; Atrium V; Avery Point CLO, Limited; Black Diamond CLO 2005-1 Ltd.; Black Diamond CLO 2005-2 Ltd.; Black Diamond CLO 2006-1 (Cayman) Ltd.; Black Diamond International Funding, Ltd.; Castle Garden Funding; Caterpillar Inc. Pension Master Trust; Chatham Light II CLO, Limited; Credit Suisse Syndicated Loan Fund n/k/a Bentham Wholesale Syndicated Loan Fund; Crescent Senior Secured Floating Rate Loan Fund LLC (formerly known as TCW Senior Secured Floating Rate Loan Fund LP); Eaton Vance CDO VIII Ltd.; Eaton Vance CDO IX Ltd.; Eaton Vance CDO X PLC; Eaton Vance Floating Rate Income Trust; Eaton Vance Grayson & Co.; Eaton Vance Institutional Senior Loan Fund; Eaton Vance Limited Duration Income Fund; Eaton Vance Medallion Floating Rate Income Portfolio; Eaton Vance Senior Debt Portfolio; Eaton Vance Senior Floating Rate Trust; Eaton Vance Senior Income Trust; Eaton Vance Short Duration Diversified Income Fund; Eaton Vance Variable Trust Floating Rate Income Fund; Evergreen Core Plus Bond Fund (Wells Fargo Advantage Income Funds: Income Plus Fund); Evergreen High Income Fund; Evergreen High Yield Bond Trust; Evergreen Income Advantage Fund (Wells Fargo Advantage Income Opportunities Fund); Evergreen Multi Sector Income Fund (Wells Fargo Advantage Multi-Sector Income Fund); Evergreen Utilities & High Income Fund (Wells Fargo Advantage Utilities & High Income Fund); Evergreen VA High Income Fund; Fidelity Advisor Series I: Fidelity Advisor Floating Rate High Income Fund; Fidelity Advisor Series I: Fidelity Advisor High Income Advantage Fund; Fidelity Advisor Series I: Fidelity Advisor High Income Fund; Fidelity Advisor Series II: Fidelity Advisor Strategic Income Fund; Fidelity American High Yield Fund; Fidelity Canadian Asset Allocation Fund; Fidelity Central Investment Portfolios LLC: Fidelity Floating Rate Central Fund; Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Fund 1; Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Fund 2; Fidelity Income Fund: Fidelity Total Bond Fund; Fidelity Puritan Trust: Fidelity Puritan Fund; Fidelity School Street Trust: Fidelity Strategic Income Fund; Fidelity Summer Street Trust: Fidelity Capital & Income Fund; Fidelity Summer Street Trust: Fidelity High Income Fund; First Trust Senior Floating Rate Income Fund II; Foothill Group Inc.; General Board of Pension and Health Benefits of the United Methodist Church; General Electric Capital Corporation; General Electric Pension Trust; IBM Personal Pension Plan Trust; International Paper Company Commingled Investment Group Trust; Iowa Public Employees' Retirement System; Jersey Street CLO, Ltd.; Katonah III, Ltd.; Katonah IV Ltd.; Legg Mason ClearBridge Capital & Income Fund (f/k/a Legg Mason Partners Capital & Income Fund); Madison Park Funding I Ltd.; Madison Park Funding II Ltd.; Madison Park Funding III Ltd.; Madison Park Funding IV Ltd.; Madison Park Funding V Ltd.; Madison Park Funding VI Ltd.; Marlborough Street CLO, Ltd.; Metropolitan West High Yield Bond Fund; MFS Charter Income Trust; MFS Intermarket Income Trust I; MFS Intermediate High Income Fund; MFS Meridian Funds - MFS Global High Yield Fund f/k/a MFS Meridian Funds - MFS Floating Rate Income Fund; MFS Multimarket Income Trust; MFS Series Trust III on behalf of MFS Global High Yield Fund f/k/a MFS Series Trust III on behalf of MFS High Yield Opportunities Fund; MFS Series Trust III on behalf of MFS High Income Fund f/k/a MFS Series Trust X on behalf of MFS Floating Rate High Income Fund; MFS Series Trust VIII on behalf of MFS Strategic Income Fund; MFS Series Trust XIII on behalf of MFS Diversified Income Fund; MFS Special Value Trust; MFS Variable Insurance Trust II on behalf of MFS High Yield Portfolio f/k/a High Yield Variable Account; MFS Variable Insurance

Trust II on behalf of MFS High Yield Portfolio; MFS Variable Insurance Trust II on behalf of MFS High Yield Portfolio f/k/a MFS Variable Insurance Trust on behalf of MFS High Income Series; MFS Variable Insurance Trust II on behalf of MFS Strategic Income Portfolio; MFS Variable Insurance Trust II on behalf of MFS Strategic Income Portfolio f/k/a MFS Variable Insurance Trust on behalf of MFS Strategic Income Series; Microsoft Global Finance; Momentum Capital Fund Ltd.; Mt. Wilson CLO II, Ltd.; Napier Park Distressed Debt Opportunity Master Fund Ltd. (f/k/a CAI Distressed Debt Opportunity Master Fund Ltd.); Nash Point CLO; Northern Trust Investments, Inc., as Named Fiduciary to the Central States, Southeast, and Southwest Areas Pension Fund;<sup>7</sup> Oaktree High Yield Fund II, L.P.; Oaktree High Yield Fund, L.P.; Oaktree High Yield Plus Fund, L.P.; Oaktree Loan Fund 2X (Cayman), L.P.; Oaktree Senior Loan Fund, L.P.; OCM High Yield Trust; Pacific Gas and Electric VEBA; PG&E Corporation Retirement Master Trust; Pyramis Floating Rate High Income Commingled Pool; Pyramis High Yield Bond Commingled Pool; Pyramis High Yield Fund, LLC; Race Point II CLO, Limited; Race Point III CLO, Limited; Race Point IV CLO, Ltd.; RGA Reinsurance Company; San Diego County Employees Retirement Association; Sankaty High Yield Partners III Grantor Trust as successor in interest to Sankaty High Yield Partners III, L.P.; State Street Bank and Trust Company as Trustee of the FCA US LLC Master Retirement Trust; State Teachers Retirement Board of Ohio; TCW High Income Partners Ltd.; TCW Senior Secured Loan Fund LP; Texas County & District Retirement System; TMCT II, LLC; TMCT, LLC; Transamerica Aegon High Yield Bond VP; Variable Insurance Products Fund V: Strategic Income Portfolio; Variable Insurance Products Fund: High Income Portfolio; Velocity CLO Ltd.; Vitesse CLO Ltd.; Water and Power Employees' Retirement, Disability and Death Benefit Insurance Plan; Wells – 13702900; Wells & Company Master Pension Trust: DBA Wells Capital Management – 12222133; West Bend Mutual Insurance Company; Western Asset Floating Rate High Income Fund, LLC

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<sup>7</sup> Northern Trust Investments, Inc., as Named Fiduciary to the Central States, Southeast, and Southwest Areas Pension Fund is represented for all purposes by Munger, Tolles & Olson LLP and not by Jones Day.