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

In re:	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No.: 09-50026 (REG)
	:	
Debtors.	:	Jointly Administered
	:	
MOTORS LIQUIDATION COMPANY	:	
AVOIDANCE ACTION TRUST, by and	:	
through the Wilmington Trust Company, solely	:	
in its capacity as Trust Administrator and	:	
Trustee,	:	
	:	Adv. Pro. No. 09-00504 (REG)
Plaintiff,	:	
	:	
-against-	:	
	:	
JPMORGAN CHASE BANK, N.A., <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	

**DEFENDANT ALTICOR INC.'S ANSWER TO FIRST AMENDED 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**

NOW COMES Alticor Inc. (“**Defendant**”), by and through its undersigned counsel, and answers 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 “**First Amended Complaint**”) of Plaintiff Motors Liquidation Company Avoidance Action Trust (the “**AAT**”) as follows:

1. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies that it is liable for any of AAT’s causes of action under the First Amended Complaint.

2. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.

3. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.

4. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph. To the extent an answer is required, Defendant does not consent to the entry of final orders or judgments by the Bankruptcy Court if it is determined that the Bankruptcy Court does not have jurisdiction to enter a final order or judgment consistent with Article III of the United States Constitution.

5. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.

6. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph.

7. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph.

8. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, 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**”) speaks for itself and Defendant denies that the DIP Order granted standing and authority to AAT.

9. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

10. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

11. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

12. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

13. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

14. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations of paragraph 14.

15. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph because they pertain to another defendant.

16. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph because they pertain to another defendant.

17. Defendant admits the allegations in this paragraph upon information and belief.

18.– 568. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in paragraphs 18 through 568 because they pertain to other defendants.

569. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

570. Defendant does not contest the allegations in this paragraph.

571. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

572. Upon information and belief Defendant admits that it received a payment during the 90 days prior to the Petition Date and/or after the Petition Date. Defendant denies that it is liable with respect to the claims set forth in the First Amended Complaint. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the remaining allegations contained in this paragraph.

573. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

574. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

575. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

576. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

577. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

578. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

579. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, the DIP Order speaks for itself and Defendant denies that it consented to jurisdiction in this Court.

580. Defendant denies the allegations contained in this paragraph, except Defendant admits that in the First Amended Complaint, AAT seeks to challenge the perfection of the lien securing the Term Loan Agreement.

581. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

582. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

583. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

584. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

585. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

**First Claim for Relief**  
**(Avoidance of Lien as Unperfected)**

586. Defendant incorporates by reference its answers to all previous paragraphs.

587. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.

588. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

589. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

**Second Claim for Relief**  
**(Avoidance and Recovery of Postpetition Transfers)**

590. Defendant incorporates by reference its answers to all previous paragraphs.

591. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations contained in this paragraph.

592. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.

593. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph. Further, the DIP Order speaks for itself.

594. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

595. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph, except Defendant admits that it received one or more transfers pursuant to the terms of the Term Loan Agreement.

596. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

597. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph. Further, the DIP Order speaks for itself.

598. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations contained in this paragraph.

599. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations contained in this paragraph.

600. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations contained in this paragraph.

601. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

602. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.

603. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant denies the allegations contained in this paragraph.

**Third Claim for Relief**  
**(Avoidance and Recovery of Payments as Preferential Transfers)**

604. Defendant incorporates by reference its answers to all previous paragraphs.

605. Defendant denies the allegations contained in this paragraph.

606. Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph, except that Defendant acknowledges receipt of one or more transfers pursuant to the terms of the Term Loan Agreement.

607. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

608. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.

609. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.



610. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

611. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant lacks sufficient information to form a belief as to the truth or the falsity of the allegations contained in this paragraph.

612. Defendant denies the allegations contained in this paragraph.

613. Defendant denies the allegations contained in this paragraph.

614. Defendant neither admits nor denies the allegations of this paragraph because they constitute a legal conclusion as to which no answer is required.

615. Defendant denies the allegations contained in this paragraph.

**Fourth Claim for Relief**  
**(To Disallow Any Claim of Defendants Until Disgorgement)**

616. Defendant incorporates by reference its answers to all previous paragraphs.

617. Defendant denies the allegations in this paragraph.

618. Defendant denies the allegations in this paragraph.

**AFFIRMATIVE DEFENSES**

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

2. The claims asserted in the First Amended Complaint are barred by the doctrines of laches, waiver, and equitable estoppel. Among other reasons, AAT waited for approximately

six years before serving Defendant with the either the First Amended Complaint or the original Complaint.

3. The claims asserted in the First Amended Complaint are barred by the applicable statute of limitations. Without limiting the generality of the foregoing, AAT waited for approximately six years before serving Defendant with any summons or complaint (including the First Amended Complaint) and the prior orders of the Bankruptcy Court extending the time for the AAT to serve the summons were ineffective. Such orders were ineffective because, among other reasons, good cause (or other cause) did not exist to enter such orders and Defendant did not have any notice of the AAT or the Unsecured Creditors' Committee seeking to extend the time for service.

4. The AAT's claims are barred due to a lack of due process in that Defendant had no knowledge of the pending adversary proceeding until approximately six years after the adversary proceeding was filed, which has prejudiced Defendant from defending this action. The prior orders of the Bankruptcy Court extending the time for service of the summons should be vacated for the reasons set forth above.

5. AAT lacks standing to bring claims against Defendant, and the AAT's claims did not survive the confirmation of the Debtors' Chapter 11 plan.

6. The filing of the Termination Statement was unauthorized by JPMorgan Chase Bank, N.A. ("**JPMorgan**") and is therefore ineffective.

7. The Termination Statement is 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.

8. The Termination Statement was filed without authority because no Term Lender ever authorized the filing of the Termination Statement.

9. JPMorgan, as Administrative Agent for the Term Loan and as Administrative Agent for the Synthetic Lease, exceeded its authority as agent of its principals by causing the Termination Statement to be filed.

10. JPMorgan has exceeded its authority in acting or purporting to act for Defendant by taking actions not expressly authorized under the terms of the Term Loan Agreement, which unauthorized actions may include without limitation purporting to act as an agent of the Term Lenders in this adversary proceeding.

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

12. The unauthorized filing of the Termination Statement did not terminate or waive Defendant's security interests in certain assets of the Debtors pursuant to the Term Loan Agreement and the Term Loan UCC Financing Statements.

13. Defendant was a secured party and beneficiary 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.

14. AAT is estopped from alleging that any security interest of JPMorgan, as administrative agent, was terminated.

15. 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 Defendant, and therefore, such collateral is excluded from the bankruptcy estate.

16. The claims asserted in the First Amended Complaint are barred by the doctrines of *in pari delicto*, unclean hands, and/or the *Wagoner* rule.

17. The claims asserted in the First Amended Complaint are barred by the doctrine of earmarking.

18. The transfers are not avoidable based on the single satisfaction rule set forth in Section 550(d) of the Bankruptcy Code.

19. The claims asserted in the First Amended Complaint are barred to the extent that Defendant is not a transferee from which AAT may recover the value of an avoided transfer under section 550 of the Bankruptcy Code.

20. At the time of the transfers to Defendant, Defendant was a perfected secured creditor thereby excepting all of the alleged transfers from avoidance as preferential transfers pursuant to Section 547(b)(5) of the Bankruptcy Code.

21. The claims asserted in the First Amended Complaint are barred to the extent that Defendant was a mere conduit for transfers.

22. The alleged pre-petition transfers sought from Defendant were (a) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and Defendants, (b) made in the ordinary course of business of business or financial affairs of the Debtors and Defendants, and (c) made according to ordinary business terms, pursuant to Bankruptcy Code section 547(c)(2).

23. Pursuant to the Term Loan Agreement, the Debtors agreed to hold harmless and indemnify each lender to the full extent of any losses or claims related to or arising out of the Term Loan Agreement. Defendant hereby invokes all of its contractual and common law indemnity rights, and hereby provides notice to AAT thereof.

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

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

26. Except claims "with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties," all claims have been released pursuant to the DIP Order.

27. Damages to AAT, if any, should be reduced to the extent that the conduct of others caused or contributed to any damages sustained by AAT.

28. Defendant incorporates by reference all defenses and affirmative defenses raised by other defendants in answer to the AAT's First Amended Complaint and/or other defenses or issues raised by other defendants in their motions to dismiss (including without limitation the motions to dismiss at Dkt. Nos. 226 and 262), regardless of whether such motions to dismiss are withdrawn, settled or otherwise resolved.

29. Defendant reserves the right to amend its affirmative defenses or add additional affirmative defenses.

**WHEREFORE**, Defendant respectfully requests the entry of an Order (a) dismissing the First Amended Complaint with prejudice; (b) entitling Defendant to recover its costs incurred in defending this action, including attorney fees, costs and expenses; and (c) granting such other and further relief as this Court deems just and proper.

Dated: November 25, 2015

WARNER NORCROSS & JUDD LLP

By: /s/ Gordon J. Toering

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