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Counsel for the Ad Hoc Group of Answering Term Lenders

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

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	:	
<i>In re:</i>	:	
	:	Chapter 11
MOTORS LIQUIDATION COMPANY, et al.,	:	
	:	Case No. 09-50026 (REG)
Debtors	:	(Jointly Administered)
	:	
	:	

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

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**ANSWER AND CROSS-CLAIMS
OF AD HOC GROUP OF ANSWERING TERM LENDERS**

The Ad Hoc Group of Answering Term Lenders (the “**Answering Term Lenders**”),¹ by their undersigned attorneys, for their Answer to the Amended Complaint dated May 20, 2015 (the “**Amended Complaint**”) of the Motors Liquidation Company Avoidance Action Trust, by and through Wilmington Trust Company, solely in its capacity as the trust administrator and trustee (the “**Trust**” or “**Plaintiff**”), answer as follows:

1. The allegations contained in Paragraph 1 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 1 of the Amended Complaint.

¹ The “Answering Term Lenders” are Solus Core Opportunities Master Fund Ltd., Sola Ltd., Solus Core Opportunities Master Fund, Ultra Master Ltd, PIMCO 1464-Freescale Semiconductor Inc., Freescale Semiconductor Inc. Retirement Savings, Freescale Semiconductor, Inc., Thrivent Financial for Lutherans, Thrivent High Yield Fund, Thrivent High Yield Portfolio, Thrivent Income Fund, Thrivent Series Fund, Inc. – Income Portfolio, Putnam 29X-Funds Trust Floating Rate Income Fund, Missouri State Employees Retirement System, MOSERS Credit Opportunities – Bank Loan Portfolio, Plumbers & Pipefitters National Pension Fund, Russell Strategic Bond Fund, Logan Circle – Russel Inst Funds LLC – Russell Core Bond, Logan Circle – Russell Investment Company PLC, Logan Circle – Russell Multi-Managed Bond Fund, Logan Circle – Russell Strategic Bond Fund, Russell Investment Company Russell Strategic Bond Fund, Russell Inst Funds LLC Russell Core Bond Fund, Russell Investment Company PLC The Global Strategic Yield Fund, Russell Investment Company PLC The Global Strategic Yield Fund on behalf of DDJ – Multi-Style, Multi-Manager, Funds PLC – Global Strategic Fund, Russell Trust Company Russell Multi-Managed Bond Fund, Russell Investment Company Russell Strategic Bond Fund, Russell Inst Funds LLC – Russell Core Bond Fund, WAMCO 3073 – John Hancock Trust Floating Rate Income Trust, John Hancock Variable Insurance Trust – Floating Rate Income Trust, WAMCO 3074 – John Hancock Fund II Floating Rate Income Fund, John Hancock Funds II – Floating Rate Income Fund, Well Capital Management 16959700, John Hancock Variable Insurance Trust – U.S. High Yields Bond Trust, Wells Capital Management 16959701, John Hancock Funds II U.S. High Yield Bond Fund, Security Investors – Security Income Fund – High Yield Series, Guggenheim High Yield Fund, and California State Teachers’ Retirement System.

Defined terms used in this Answer that are not otherwise defined herein have the meanings ascribed to them in the Amended Complaint.

2. The allegations contained in Paragraph 2 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 2 of the Amended Complaint.

3. The allegations contained in Paragraph 3 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 3 of the Amended Complaint.

4. The allegations contained in Paragraph 4 of the Amended Complaint do not contain any allegations against the Answering Term Lenders, and as such no response is required. To the extent a response is required, in accordance with Local Bankruptcy Rule 7012-1, the Answering Term Lenders do not consent to the entry of final orders or judgment by the Bankruptcy Court if it is determined that the Bankruptcy Court does not have jurisdiction to enter a final judgment or order consistent with Article III of the United States Constitution.

5. The allegations contained in Paragraph 5 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 5 of the Amended Complaint.

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

7. The Answering Term Lenders admit the allegations contained in Paragraph 7 of the Amended Complaint.

8. The allegations contained in Paragraph 8 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny the allegations contained in Paragraph 8 of the Amended Complaint, except admit 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 [Dkt. No. 2529] (the “**DIP Order**”) provides the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “**Committee**”) with certain limited rights “with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]”, and refer to the DIP Order for a full and accurate recitation of its terms.

9. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 9 of the Amended Complaint.

10. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 10 of the Amended Complaint.

11. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 11 of the Amended Complaint.

12. The allegations contained in Paragraph 12 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny the allegations contained in Paragraph 12 of the Amended Complaint, except admit that the Bankruptcy Court entered an order (the “**Confirmation Order**”) [Dkt. No. 9941] confirming the *Debtors’ Second Amended Joint Chapter 11 Plan* [Dkt. No. 9836] (the “**Plan**”) and refer to the Plan for a full and accurate recitation of its terms.

13. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 13 of the Amended Complaint.

14. The allegations contained in Paragraph 14 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny the allegations contained in Paragraph 14 of the Amended Complaint, and refers to the DIP Order, the Confirmation Order, the Plan and the Trust Agreement for the terms set forth therein.

15. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 15 of the Amended Complaint.

16. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 16 of the Amended Complaint.

17. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 17 of the Amended Complaint.

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169. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 169 of the Amended Complaint.

170. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 170 of the Amended Complaint.

171. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 171 of the Amended Complaint.

172. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 172 of the Amended Complaint.

173. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 173 of the Amended Complaint.

174. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 174 of the Amended Complaint.

175. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 175 of the Amended Complaint.

176. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 176 of the Amended Complaint.

177. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 177 of the Amended Complaint.

178. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 178 of the Amended Complaint.

179. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 179 of the Amended Complaint.

180. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 180 of the Amended Complaint.

181. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 181 of the Amended Complaint.

182. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 182 of the Amended Complaint.

183. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 183 of the Amended Complaint.

184. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 184 of the Amended Complaint.

185. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 185 of the Amended Complaint.

186. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 186 of the Amended Complaint.

187. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 187 of the Amended Complaint.

188. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 188 of the Amended Complaint.

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191. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 191 of the Amended Complaint.

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296. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 296 of the Amended Complaint.

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531. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 531 of the Amended Complaint.

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541. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 541 of the Amended Complaint.

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558. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 558 of the Amended Complaint.

559. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 559 of the Amended Complaint.

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563. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 563 of the Amended Complaint.

564. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 564 of the Amended Complaint.

565. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 565 of the Amended Complaint.

566. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 566 of the Amended Complaint.

567. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 567 of the Amended Complaint.

568. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 568 of the Amended Complaint.

569. The allegations contained in Paragraph 569 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 569 of the Amended Complaint.

570. The allegations contained in Paragraph 570 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny the allegations contained in Paragraph 570 of the Amended Complaint, except admit that the Trust collectively refers to the parties listed in Paragraphs 15 through 569 of the Amended Complaint as “Defendants.”

571. The Answering Term Lenders deny the allegations contained in Paragraph 571, except admit that General Motors Corporation (“**General Motors**”), Saturn Corporation, and JPMorgan, as Administrative Agent, entered into the Term Loan Agreement and refer to the Term Loan Agreement for the terms set forth therein.

572. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 572 of the Amended Complaint, except admit that certain lenders, including some of those named as Defendants in this action, 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, and refer to the Term Loan Agreement for the terms set forth therein.

573. The Answering Term Lenders admit the allegations contained in Paragraph 573 of the Amended Complaint.

574. The Answering Term Lenders deny the allegations contained in Paragraph 574 of the Amended Complaint, except admit that the Debtors filed a motion on the Petition Date seeking, *inter alia*, authority from the Bankruptcy Court to obtain post-petition financing (the “**DIP Motion**”) [Dkt. No. 574], and refer to the DIP Motion for the terms set forth therein.

575. The Answering Term Lenders deny the allegations contained in Paragraph 575 of the Amended Complaint, except admit 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 refer to the DIP Motion for the terms set forth therein.

576. The Answering Term Lenders deny the allegations contained in Paragraph 576 of the Amended Complaint, except admit that the Trust was involved in negotiating the DIP Order and that the DIP Order provides the Trust 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 refer to the DIP Order for the terms set forth therein.

577. The Answering Term Lenders deny the allegations contained in Paragraph 577 of the Amended Complaint, except admit that DIP Credit Facility (as defined in the DIP Order) was approved by the Bankruptcy Court and that the DIP Order provides the Committee with certain limited rights “with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]” and refer to the DIP Order for the terms set forth therein.

578. The Answering Term Lenders deny the allegations contained in Paragraph 578 of the Amended Complaint, except admit that the interest and principal outstanding at the time of payment under the Term Loan Agreement has been repaid out of the proceeds of the DIP Credit Facility (as defined in the DIP Order) and refer to the DIP Order for the terms set forth therein.

579. The allegations contained in Paragraph 579 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, the Answering Term Lenders deny the allegations contained in Paragraph 579 of the Amended Complaint and refer to the DIP Order for the terms set forth therein.

580. The Answering Term Lenders deny the allegations contained in Paragraph 580 of the Amended Complaint, except admit that the Committee purported to bring this action to challenge the first-priority lien that secured the loan made under the Term Loan Agreement.

581. The Answering Term Lenders deny the allegations contained in Paragraph 581 of the Amended Complaint, except admit that two UCC-1 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 refer to the Term Loan UCC Financing Statements for the terms set forth therein.

582. The Answering Term Lenders deny the allegations contained in Paragraph 582 of the Amended Complaint, except admit that a UCC-3 financing statement amendment dated October 30, 2008 (the “**October 2008 Amendment**”) was filed with the Delaware Secretary of State, and respectfully refer to the October 2008 Amendment for the terms set forth therein.

583. The allegations contained in Paragraph 583 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny the allegations contained in paragraph 583 of the Amended Complaint.

584. The Answering Term Lenders deny the allegations contained in Paragraph 584 of the Amended Complaint, except admit that on or about March 1, 2013, the Bankruptcy Court entered a *Decision on Cross Motions for Summary Judgment* (the “**Decision**”) [Adv. Pro. Dkt. No. 71], a *Judgment* (the “**Judgment**”) [Adv. Pro. Dkt. No. 73] and an *Order on Cross Motions for Summary Judgment* (the “**Order**”) [Adv. Pro. Dkt. No. 72] and refer to the Decision, the Judgment, and the Order for the terms set forth therein.

585. The Answering Term Lenders deny the allegations contained in Paragraph 585 of the Amended Complaint, except admit 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 refer to the Second Circuit Decision for the terms set forth therein.

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

586. The Answering Term Lenders repeat and re-allege their responses to Paragraphs 1 through 585 of the Amended Complaint as if fully set forth herein.

587. The allegations contained in Paragraph 587 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 587 of the Amended Complaint.

588. The allegations contained in Paragraph 588 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 588 of the Amended Complaint.

589. The allegations contained in Paragraph 589 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the

Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 589 of the Amended Complaint.

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

590. The Answering Term Lenders repeat and re-allege their responses to Paragraphs 1 through 589 of the Amended Complaint as if fully set forth herein.

591. The Answering Term Lenders deny the allegations contained in Paragraph 591 of the Amended Complaint.

592. The allegations contained in Paragraph 592 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders admit 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 refer to Section 549 of the Bankruptcy Code for the provisions set forth therein.

593. The Answering Term Lenders deny the allegations contained in Paragraph 593 of the Amended Complaint, except admit 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 refer to the DIP Order for the terms set forth therein.

594. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 594 of the Amended Complaint.

595. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 595 of the Amended Complaint.

596. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 596 of the Amended Complaint.

597. The Answering Term Lenders deny the allegations contained in Paragraph 597 of the Amended Complaint, except admit that the DIP Order provides the Trust 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 refer to the DIP Order for the terms set forth therein.

598. The Answering Term Lenders deny the allegations contained in Paragraph 598 of the Amended Complaint.

599. The Answering Term Lenders deny the allegations contained in Paragraph 599 of the Amended Complaint.

600. The Answering Term Lenders deny the allegations contained in Paragraph 600 of the Amended Complaint.

601. The Answering Term Lenders deny the allegations contained in Paragraph 601 of the Amended Complaint, except admit that some portion of the collateral was secured and perfected by filings other than the Financing Statement.

602. The allegations contained in Paragraph 602 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 602 of the Amended Complaint.

603. The Answering Term Lenders deny the allegations contained in Paragraph 603 of the Amended Complaint.

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

604. The Answering Term Lenders repeat and re-allege their responses to Paragraphs 1 through 603 of the Amended Complaint as if fully set forth herein.

605. The Answering Term Lenders deny the allegations contained in Paragraph 605 of the Amended Complaint.

606. The Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 606 of the Amended Complaint.

607. The allegations contained in Paragraph 607 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of Paragraph 607 of the Amended Complaint.

608. The allegations contained in Paragraph 608 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 608 of the Amended Complaint.

609. The allegations contained in Paragraph 609 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 609 of the Amended Complaint.

610. The allegations contained in Paragraph 610 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the

Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 610 of the Amended Complaint.

611. The allegations contained in Paragraph 611 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 611 of the Amended Complaint.

612. The Answering Term Lenders deny the allegations contained in Paragraph 612 of the Amended Complaint.

613. The Answering Term Lenders deny the allegations contained in Paragraph 613 of the Amended Complaint.

614. The allegations contained in Paragraph 614 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, the Answering Term Lenders deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 614 of the Amended Complaint.

615. The Answering Term Lenders deny the allegations contained in Paragraph 615 of the Amended Complaint.

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

616. The Answering Term Lenders repeat and re-allege their responses to Paragraphs 1 through 615 of the Amended Complaint as if fully set forth herein.

617. The Answering Term Lenders deny the allegations contained in Paragraph 617 of the Amended Complaint.

618. The Answering Term Lenders deny the allegations contained in Paragraph 618 of the Amended Complaint.

The Answering Term Lenders further deny and object to each one of Plaintiff's "prays for judgment" numbered 1 through 8 and set forth on pages 77 and 78 of the Amended Complaint.

AFFIRMATIVE DEFENSES

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

At the present time, the Answering Term Lenders assert that the claims alleged in the Amended Complaint against the Answering Term Lenders are barred, in whole or in part, because:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred for insufficient service of process.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of laches and equitable estoppel.

FIFTH AFFIRMATIVE DEFENSE

The October 2008 Amendment is void and ineffective because JPMorgan, in its capacity as Administrative Agent for 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 authorize the Debtors to file the October 2008 Amendment.

SIXTH AFFIRMATIVE DEFENSE

The October 2008 Amendment is void and ineffective because JPMorgan did not obtain the consent of the Answering Term Lenders to permit the Debtors to file that amendment as required under the Term Loan Agreement.

SEVENTH AFFIRMATIVE DEFENSE

The October 2008 Amendment 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 Term Loan, exceeded the extent of its authority as an agent of its principals, including the Answering Term Lenders, when it permitted the Debtors to file the October 2008 Amendment.

EIGHTH AFFIRMATIVE DEFENSE

The October 2008 Amendment is void and ineffective because JPMorgan did not authorize its filing.

NINTH AFFIRMATIVE DEFENSE

The unauthorized filing of the October 2008 Amendment did not waive the Answering Term Lenders' security interest in certain assets of the Debtors pursuant to the Term Loan Agreement and the Term Loan UCC Financing Statements.

TENTH AFFIRMATIVE DEFENSE

Each of the Answering Term Lenders were secured parties and had 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 Secretary of State of Delaware listing Saturn Corporation as the "debtor" as well as multiple state fixture filings.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Amended Complaint against the Answering Term Lenders are barred by the doctrine of mistake, which requires reinstatement of the erroneously discharged security interests.

FOURTEENTH AFFIRMATIVE DEFENSE

At the time any of the purported transfers referenced in the Amended Complaint were allegedly made by the Debtors, each of the Answering Term Lenders was a perfected secured creditor thereby excepting all of the alleged transfers from avoidance as preferential transfers pursuant to Bankruptcy Code Section 547(b)(5).

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Amended Complaint are barred to the extent that any of the Answering Term Lenders are not transferees from which the Trust may recover the value of an avoided transfer under Section 550(b) of the Bankruptcy Code.

SEVENTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Amended Complaint against one or more of the Answering Term Lenders are barred to the extent one or more of the Answering Term Lenders was a mere conduit with respect to any of the alleged transfers.

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

Because the DIP Order reserves for the Trust “only [the right to challenge] the perfection of first priority liens of the Postpetition Senior Facilities Secured Parties,” the Trust lacks standing and authority to bring the Second, Third, and Fourth Claims for Relief asserted in the Amended Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The First and Third Claims for Relief, and the Fourth Claim for Relief inasmuch as it seeks disallowance in connection with the First and Third Claims for Relief, are barred by Section 546(e) of the Bankruptcy Code.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Pursuant to Bankruptcy Code Section 547(c)(2), the alleged transfers sought from the Answering Term Lenders in the Amended Complaint were (a) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and the Answering Term Lenders, (b) made in the ordinary course of business or financial affairs of the

Debtors and the Answering Term Lenders, and/or (c) made according to ordinary business terms.

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The Answering Term Lenders hereby adopt and incorporate 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 Term Lenders.

WHEREFORE, the Answering Term Lenders respectfully request that judgment be entered in their favor as follows:

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

CROSS-CLAIMS

The Cross-Claiming Term Loan Lenders² hereby assert the following cross-claims (the “**Cross-Claims**”) against JPMorgan Chase Bank, N.A. (“**JPMorgan**”):

1. The Cross-Claiming Term Loan Lenders are defendants in this adversary proceeding (the “**Avoidance Action**”) solely because JPMorgan negligently, recklessly, and with gross negligence caused the filing of an improper and unauthorized UCC-3 financing statement (the “**Termination Statement**”) purporting to terminate the financing statements that perfected the security interests that protected the Cross-Claiming Term Loan Lenders and other lenders (collectively, the “**Term Loan Lenders**”) in connection with the \$1.5 billion term loan (the “**Term Loan**”) at issue in this Avoidance Action.

2. JPMorgan, as Administrative Agent under the Term Loan (“**Agent**”) recklessly caused the filing of the Termination Statement in its capacity as an administrative agent for a different set of lenders and in connection with a refinancing of an unrelated synthetic lease facility (the “**Synthetic Lease**”), a transaction entirely separate from the Term Loan. JPMorgan

² The “Cross-Claiming Term Loan Lenders” are Solus Core Opportunities Master Fund Ltd., Sola Ltd., Solus Core Opportunities Master Fund, Ultra Master Ltd, PIMCO 1464-Freescale Semiconductor Inc., Freescale Semiconductor Inc. Retirement Savings, Freescale Semiconductor, Inc., Thrivent Financial for Lutherans, Thrivent High Yield Fund, Thrivent High Yield Portfolio, Thrivent Income Fund, Thrivent Series Fund, Inc. – Income Portfolio, Putnam 29X-Funds Trust Floating Rate Income Fund, Missouri State Employees Retirement System, MOSERS Credit Opportunities – Bank Loan Portfolio, Plumbers & Pipefitters National Pension Fund, Russell Strategic Bond Fund, Logan Circle – Russel Inst Funds LLC – Russell Core Bond, Logan Circle – Russell Investment Company PLC, Logan Circle – Russell Multi-Managed Bond Fund, Logan Circle – Russell Strategic Bond Fund, Russell Investment Company Russell Strategic Bond Fund, Russell Inst Funds LLC Russell Core Bond Fund, Russell Investment Company PLC The Global Strategic Yield Fund, Russell Investment Company PLC The Global Strategic Yield Fund on behalf of DDJ – Multi-Style, Multi-Manager, Funds PLC – Global Strategic Fund, Russell Trust Company Russell Multi-Managed Bond Fund, Russell Investment Company Russell Strategic Bond Fund, Russell Inst Funds LLC – Russell Core Bond Fund, WAMCO 3073 – John Hancock Trust Floating Rate Income Trust, John Hancock Variable Insurance Trust – Floating Rate Income Trust, WAMCO 3074 – John Hancock Fund II Floating Rate Income Fund, John Hancock Funds II – Floating Rate Income Fund, Well Capital Management 16959700, John Hancock Variable Insurance Trust – U.S. High Yields Bond Trust, Wells Capital Management 16959701, John Hancock Funds II U.S. High Yield Bond Fund, Security Investors – Security Income Fund – High Yield Series, Guggenheim High Yield Fund, and California State Teachers’ Retirement System.

completely disregarded its contractual obligations as Agent under the Term Loan Agreement, dated as of November 29, 2006, as amended by that certain first amendment dated as of March 4, 2009 (the “**Term Loan Agreement**”) by erroneously causing the filing of the Termination Statement where it had no authorization to do so from the Term Loan Lenders and where the documents specifically restricted releasing the security interest without such authority only where the debt was fully repaid. Indeed, Richard Duker (“**Mr. Duker**”), a JPMorgan managing director responsible for both the Term Loan and the Synthetic Lease that authorized the filing of the Termination Statement, was fully aware of all of JPMorgan’s obligations to the Term Loan Lenders.

3. The Term Loan Lenders extended credit to General Motors Corporation (“**GM**”) based on the commitment and understanding that the Term Loan Lenders would have a perfected security interest in a substantial portion of GM’s assets, the value of which was to remain well in excess of the amount needed to secure payment of the Term Loan. In addition to serving as Agent, JPMorgan also undertook to serve as the secured party of record for the financing statements filed to perfect the Term Loan Lenders’ security interests. The primary function of JPMorgan’s role was to ensure that the Term Loan Lenders had fully perfected, first priority security interests.

4. JPMorgan violated these fundamental obligations by releasing the Term Loan Lenders’ security interests for no consideration (let alone full repayment) and without authorization. JPMorgan could have promptly corrected this error and potentially averted any harm to the Term Loan Lenders. However, making matters worse, JPMorgan apparently had no alert or third-party notification system in place that would notify it that a UCC filing had released liens securing the Term Loan. In violating its obligations, JPMorgan exposed the Term Loan

Lenders to the risk of potentially devastating losses on their secured loans. Following JPMorgan's error, GM filed for bankruptcy protection under Title 11 of Chapter 11 of the United States Code (the "**Bankruptcy Code**"). Pursuant to the terms of 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 [Docket No. 2529] (the "**DIP Order**"), and because of the Term Loan Lenders' status as secured creditors, the Term Loan was repaid in full. Within weeks of that repayment, however, GM's official committee of unsecured creditors (the "**Committee**") filed this Avoidance Action challenging the Term Loan Lenders' right to repayment, asserting that the Term Loan Lenders' security interests in their Collateral (as defined herein) were terminated as a result of JPMorgan filing the Termination Statement.

5. Following the commencement of the Avoidance Action, JPMorgan stipulated with the Committee to sideline the Term Loan Lenders from litigating the merits of the Avoidance Action, including by seeking Court orders extending indefinitely the Committee's time to serve process on the Term Loan Lenders, which the Court granted (the "**Extension Orders**"). These Extension Orders and others have caused a nearly six-year delay in service of process upon the Term Loan Lenders, as the Motors Liquidation Company Avoidance Action Trust, by and through Wilmington Trust Company, solely in its capacity as the trust administrator and trustee (the "**Avoidance Trust**" or "**Plaintiff**") has only purportedly served the Term Loan Lenders with process beginning in May 2015. Now that the Term Loan Lenders have purportedly been served with process, JPMorgan asserts that claims against it are time-

barred based on its contention that the statute of limitations on the Term Loan Lenders' Cross-Claims ran during the time period in which the Extension Orders were in place.

6. While the Term Loan Lenders deny that the Termination Statement was effective to destroy the perfection of their security interests under the Term Loan, to the extent that any of the Cross-Claiming Term Loan Lenders are subject to a judgment in this Avoidance Action requiring disgorgement of any transfers received under the Term Loan Agreement, JPMorgan should be required to indemnify and hold the Cross-Claiming Term Loan Lenders harmless.

7. Indeed, it was JPMorgan's egregious negligence, gross negligence, and breaches of its duties and obligations as Agent under the Term Loan Agreement that caused the filing of the Termination Statement and exposed the Term Loan Lenders to liability. Accordingly, the Cross-Claiming Term Loan Lenders seek a judgment that JPMorgan was negligent and breached its obligations to the Cross-Claiming Term Loan Lenders, that JPMorgan acted wholly outside of any authority that it was granted in connection with the Term Loan, and that JPMorgan must indemnify and hold the Cross-Claiming Term Loan Lenders harmless from any liability related to its misconduct.

THE PARTIES

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

9. The Cross-Claiming Term Loan Lenders are investors and investment funds that owned interests in the Term Loan.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334, and 1367. The amount in controversy exceeds \$75,000.

11. Venue is proper pursuant to 28 U.S.C. § 1409(a) because these Cross-Claims arise in, and relate to, the underlying Avoidance Action, the parties to the Term Loan Agreement expressly consented to venue in this jurisdiction, and many of the events that gave rise to the Cross-Claims took place within this jurisdiction.

FACTUAL ALLEGATIONS

I. The Term Loan

12. Pursuant to the Term Loan Agreement, the Term Loan Lenders advanced \$1.5 billion to GM and certain of its subsidiaries (collectively, the “**Debtors**”) secured by first-priority liens on certain assets of GM (“**Liens**”).

13. JPMorgan is the Administrative Agent under the Term Loan Agreement, with the authority to take certain specified actions on the Term Loan Lenders’ behalf.

14. In connection with the Term Loan, GM, Saturn Corporation, and JPMorgan, as Administrative Agent, executed the Collateral Agreement, dated November 29, 2006 (the “**Collateral Agreement**”).

15. Both the Term Loan Agreement and the Collateral Agreement were executed by Mr. Duker, a JPMorgan managing director, on behalf of JPMorgan.

16. The Term Loan Agreement included an express commitment that the collateral underlying the Term Loan would at all times be protected by a fully-perfected, first-priority security interest. Specifically, Article II of the Collateral Agreement for the Term Loan reflected GM’s grant to JPMorgan, for the benefit of the Secured Parties defined therein, of a first-priority security interest in a substantial portion of GM’s assets, including all of GM’s fixtures and equipment at forty-two (42) different facilities across the United States, as well as associated intangibles, documents and proceeds (the “**Collateral**”).

17. The Term Loan Agreement required GM to take all necessary action to grant JPMorgan, for the benefit of the Term Loan Lenders, a perfected security interest in the Collateral, including the filing of UCC financing statements. *See* Term Loan Agreement § 5.05.

18. The security interests created by the Collateral Agreement for the Term Loan were perfected by the filing of twenty-eight (28) UCC-1 financing statements (the “**UCC-1 Term Loan Financing Statements**”), the broadest of which was a UCC-1 financing statement filed in Delaware on November 30, 2006 and bearing the number “6416808 4” (the “**Main Term Loan UCC-1**”). The Main Term Loan UCC-1 perfected the Term Loan Lenders’ security interest in equipment, fixtures and related property at forty-two (42) GM manufacturing facilities across the United States.

19. The Term Loan Agreement expressly stated that JPMorgan did not have the authority either to terminate, or to permit others to terminate, the UCC-1 Term Loan Financing Statements for the Term Loan unless: (i) the Term Loan had been repaid in full; or (ii) the Term Loan Lenders had consented in writing to the termination. *See* Term Loan Agreement § 10.01.

20. In addition to its role as Agent under the Term Loan, JPMorgan served as the secured party of record for the UCC-1 Term Loan Financing Statements. All twenty-eight (28) of the UCC-1 Term Loan Financing Statements, including the Main Term Loan UCC-1, listed “JPMorgan Chase Bank, N.A. as Administrative Agent,” as the secured party of record. The Main Term Loan UCC-1 annex referenced, among other things, the Term Loan Agreement.

II. The Synthetic Lease Facility

21. Completely separate and apart from the Term Loan, in 2001, GM entered into the Synthetic Lease.

22. Chase Manhattan Bank, N.A. (“**Chase Manhattan**”) was the Administrative Agent under the Synthetic Lease. Upon information and belief, when JPMorgan and Chase Manhattan merged in 2001, JPMorgan took over Chase Manhattan’s duties and obligations as Administrative Agent under the Synthetic Lease.

23. GM’s obligations under the Synthetic Lease were secured by liens on twelve (12) specific GM properties identified in the various agreements pertaining to the Synthetic Lease. Unlike the Collateral securing the Term Loan, the collateral securing the Synthetic Lease consisted primarily of real estate and was entirely separate from the assets that collateralized the Term Loan.

24. JPMorgan filed UCC-1 financing statements (the “**UCC-1 Synthetic Lease Financing Statements**”) with a variety of recording offices in connection with the Synthetic Lease, and as with the Term Loan, these statements identified “JPMorgan Chase Bank, as Administrative Agent” as the secured party. Three of the UCC-1 Synthetic Lease Financing Statements were filed in Delaware, two of which were dated April 12, 2002, and related to real property and related collateral in Marion County, Indiana. The third was filed in 2007 against Auto Facilities Real Estate Trust 2001-1, and related to parking lots in Detroit, Michigan.

III. JPMorgan Recklessly Terminates The UCC-1 Term Loan Financing Statements.

25. JPMorgan recklessly disregarded its contractual obligations as Agent under the Term Loan Agreement by erroneously causing the filing of the Termination Statement in connection with the unrelated Synthetic Lease. JPMorgan did not have any authorization to do so from the Term Loan Lenders and the documents underlying the Term Loan specifically restricted releasing the security interest without such authority only where the debt was repaid, which it was not.

26. The Synthetic Lease was scheduled to mature on October 31, 2008. On or about October 1, 2008, GM informed Mr. Duker that GM intended to repay the Synthetic Lease in full.

27. In connection with the Synthetic Lease, GM retained the law firm of Mayer Brown LLP (“**Mayer Brown**”). Mayer Brown was not retained to provide advice or representation to GM, JPMorgan, or any other party in connection with the Term Loan.

28. Also in connection with the Synthetic Lease, JPMorgan retained the law firm Simpson Thacher & Bartlett LLP (“**Simpson**”). Simpson was not retained to provide any advice or representation to GM, JPMorgan, or any other party in connection with the Term Loan. Nor did JPMorgan delegate to Simpson any of its responsibilities or obligations as Agent under the Term Loan, including its responsibilities and obligations as secured party of record for the Term Loan Lenders.

29. As secured party of record for the Synthetic Lease transaction, JPMorgan was responsible for terminating the relevant UCC-1 Synthetic Lease Financing Statements upon repayment of the Synthetic Lease debt.

30. Mr. Duker, who also executed the Term Loan Agreement on behalf of JPMorgan, knew or recklessly disregarded the fact that GM was not repaying the Term Loan at that time.

31. Mr. Duker was also well aware at that time of GM’s declining financial condition and thus, that maintaining the perfection of the Collateral was of vital importance.

32. Indeed, on October 10, 2008, while GM was preparing the closing documents for the Synthetic Lease payoff, a representative of Wells Fargo emailed Mr. Duker to express concern about GM and the Collateral for the Term Loan. The email noted that GM’s stock had fallen “~84%” and that GM’s bonds had “seen a similar decline.” The Wells Fargo representative expressed concern about making sure that the value of the Collateral was

sufficient to ensure repayment of the Term Loan, and inquired whether the Term Loan Lenders should seek to reduce their exposure to GM or demand additional collateral. In response to the email, Mr. Duker noted that the collateral included “M&E/special tools” and that “property is not part of the collateral.”

33. Nevertheless, neither Mr. Duker, nor anyone else at JPMorgan, took any steps 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 Loan Lenders.

34. This set the stage for the colossal error made by JPMorgan in connection with terminating the UCC-1 Synthetic Lease Financing Statements.

35. GM and Mayer Brown 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, checklists that identified the Main Term Loan UCC-1 as one of the UCC-1 Synthetic Lease Financing Statements to be terminated at the time of the closing of the Synthetic Lease payoff. GM 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 its client, JPMorgan. GM also circulated a draft of an escrow agreement (the **“Synthetic Lease Escrow Agreement”**), which provided that, upon the delivery of the funds necessary to repay the Synthetic Lease, the escrow agent would permit GM to file various UCC-3 termination statements, including the improper Termination Statement.

36. Upon information and belief, at no point during this process did JPMorgan undertake to determine for itself whether the correct financing statements were identified for termination in connection with the Synthetic Lease. Nor, upon information and belief, did

JPMorgan undertake to ensure that no *other* financing statements were identified for termination, including the Main Term Loan UCC-1 that is at issue in this Avoidance Action.

37. Further, despite its duty and obligation as the secured party listed on the UCC-1 Term Loan Financing Statements (and the UCC-1 Synthetic Lease Financing Statements), and as Agent under the Term Loan, to review and understand any UCC statements filed in its name in connection with the Term Loan, JPMorgan did not take any action to determine for itself which UCC-1 financing statements were being terminated on its behalf.

38. Rather, JPMorgan simply signed the Synthetic Lease Escrow Agreement without taking any steps to verify that the UCC-3 termination statements it instructed the escrow agent to file related only to the Synthetic Lease and not to the Term Loan.

39. On or about November 1, 2008, with JPMorgan's knowledge and consent, GM and Mayer Brown caused the Termination Statement to be filed with the Delaware Secretary of State.

40. JPMorgan did not sign the Synthetic Lease Escrow Agreement authorizing GM to file the UCC-3 statements terminating the *Synthetic Lease* -- including, recklessly and improperly, the Termination Statement -- in its capacity or within its authority as Agent under the *Term Loan*, nor as secured party of record under the Main Term Loan UCC-1.

41. JPMorgan lacked entirely the power and authority to permit the filing of any UCC statements relating to the Term Loan that would impact the Term Loan Lenders' rights under the Term Loan. Indeed, JPMorgan acted entirely without authority -- and outside the scope of its agency under the Term Loan Agreement -- when it gratuitously released the Collateral, to the Term Loan Lenders' detriment.

42. JPMorgan's actions with respect to the unauthorized and improper filing of the Termination Statement constituted negligence and gross negligence and JPM's utter and reckless disregard for the rights of the Term Loan Lenders.

43. JPMorgan knew or recklessly disregarded that in October 2008, GM was experiencing serious financial difficulties, with a significant likelihood that GM would file for bankruptcy protection.

44. JPMorgan also negligently and recklessly ignored numerous red flags indicating that GM was preparing to file a UCC-3 termination statement related to the Collateral in connection with the Term Loan.

45. On October 15, 2008, GM's lawyers sent JPMorgan's lawyers a draft closing checklist along with a collection of draft UCC filings, all of which pertained to real property except the one in question. That same day, JPMorgan's lawyers forwarded the checklist and the draft documents to Mr. Duker. Under the heading "Termination of UCCs (central, DE filings)," the draft checklist included 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 indicated an obvious error, as the Synthetic Lease was a real estate transaction, and the collateral securing that loan consisted of real estate and related fixtures. In contrast, the Collateral under the Term Loan primarily relates to equipment and fixtures. Thus, the references to "equipment" and "fixtures" at "U.S. manufacturing facilities" were sufficient to alert JPMorgan to the fact that GM was proposing to file a termination statement with respect to the wrong collateral, to the detriment of the Term Loan Lenders.

46. The reference in the proposed Termination Statement to "file date 11/30/2006" -- which is the date following the closing of the Term Loan -- was another red flag. As

JPMorgan knew, the Synthetic Lease transaction had closed in 2001, five years earlier, and thus no UCC-1 would have been filed in connection with the Synthetic Lease in 2006. The proposed Termination Statement thus revealed on its face that it was purporting to terminate a financing statement unrelated to the Synthetic Lease.

47. The numbering by which the Term Loan financing statement was designated on the proposed Termination Statement was yet another red flag. Different in form from the numbers on the Synthetic Lease financing statement, it provided further notice to JPMorgan that GM intended to file a UCC-3 termination statement related to the Term Loan, not the Synthetic Lease.

48. Despite all these warning signs, JPMorgan negligently and recklessly caused the filing of the Termination Statement.

49. Making matters worse, JPMorgan apparently never engaged a UCC “watch” or alert service to notify it of any UCC filings. Had JPMorgan engaged such a service, JPMorgan could have promptly corrected this egregious error and potentially averted any harm to the Term Loan Lenders. Instead, it discovered the error after GM had filed bankruptcy proceedings when it was far too late.

**IV. JPMorgan Did Not Notify The Term Loan Lenders Of Its Error,
Nor Did It Take Action To Correct The Error.**

50. JPMorgan had a duty promptly to notify the Term Loan Lenders, JPMorgan’s principals, of the erroneous filing of the Termination Statement. JPMorgan neither notified the Term Loan Lenders of the erroneous filing, nor did it take any action to remedy the situation, including by filing corrective UCC statements to ensure that the Liens on the Collateral remained perfected.

51. Upon information and belief, in January 2009, GM informed JPMorgan that its financial situation had further deteriorated, and that its auditors were going to include a “going concern” qualification in connection with their audit of GM’s financial statements such that GM risked default under the Term Loan Agreement.

52. GM and JPMorgan negotiated an amendment to the Term Loan Agreement that, among other things, prevented GM from defaulting on the Term Loan due to the “going concern” qualification. JPMorgan was paid a \$6 million fee in connection with its efforts to assist GM in avoiding a default under the Term Loan Agreement.

53. Upon information and belief, when the bankruptcy of a debtor becomes likely, it is standard practice for administrative agents on secured loans -- including JPMorgan -- to review relevant UCC filings associated with the loan. Even a rudimentary search, conducted any time after the Termination Statement was filed in October 2008, would have uncovered the Termination Statement and JPMorgan’s gross breach of its duties and obligations as Agent under the Term Loan Agreement.

V. The Avoidance Action.

54. One June 1, 2009 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court.

55. As of the Petition Date, the outstanding principal balance under the Term Loan Agreement was in excess of \$1.4 billion.

56. On June 3, 2009, the Office of the United States Trustee appointed the Committee pursuant to Section 1102 of the Bankruptcy Code.

57. On the Petition Date, the Debtors filed a motion (the “**DIP Motion**”) seeking authority from this Court to obtain in excess of \$33 billion in post-petition financing (the “**DIP**

Loans”) to pay certain pre-petition claims, among other things. The DIP Motion included a request for authorization to use a portion of the DIP Loans to pay in full all claims under the Term Loan Agreement, which were fully secured, first-priority claims.

58. On June 25, 2009, this Court entered the DIP Order. Among other things, the DIP Order finally approved the DIP Loans. Following entry of the DIP Order, the Debtors paid \$1,481,656,507.70 to the Term Loan Lenders in full satisfaction of all claims arising under the Term Loan Agreement.

59. On March 1, 2013, this Court entered its *Decision on Cross Motions for Summary Judgment, Judgment* against the Committee, and *Order on Cross Motion for Summary Judgment* (collectively, the “**March 1, 2013 Summary Judgment Orders and Judgment**”). The March 1, 2013 Summary Judgment Orders and Judgment concluded that the Termination Statement did not terminate the perfection of the Liens in favor of the Term Loan Lenders.

60. On January 21, 2015, the Second Circuit reversed and remanded, holding that the filing of the Termination Statement was not “unauthorized” and was effective to terminate the Term Loan Lenders’ security interest in the Collateral.³

61. On May 20, 2015, the Avoidance Trust filed the Amended Complaint in the Avoidance Action, seeking to: (i) avoid the Liens on the Collateral pursuant to Section 544(a) of the Bankruptcy Code; (ii) avoid and recover post-petition transfers pursuant to Section 549 of the Bankruptcy Code; (iii) avoid and recover preferential payments pursuant to Section 547 of the Bankruptcy Code; and (iv) disallow any claim of the Avoidance Action defendants until disgorgement, pursuant to Section 502(d) of the Bankruptcy Code

³ See *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Bank, N.A. (In re Motors Liquidation Co.)*, 777 F.3d 100, 104-05 (2d Cir. 2015).

62. Following the filing of the initial complaint in 2009, JPMorgan and the Committee agreed to request that the Court permit the Committee to delay service of process on all Avoidance Action defendants other than JPMorgan.

63. The parties filed stipulations and proposed orders concerning service extensions, in which JPMorgan represented to the Court that its interests were aligned with the Term Loan Lenders because it too held a portion of the Term Loan debt. JPMorgan even represented to the Court that it was acting both individually “and as administrative agent.”

64. As a result of JPMorgan’s agreements to permit the Committee and, later, the Avoidance Trust to defer and delay service of process in this Avoidance Action on the Term Loan Lenders, the Term Loan Lenders have been sidelined from this Avoidance Action which has prejudiced their ability to defend and protect their interests. Indeed, there has been extensive discovery and briefing, including before the Second Circuit, as to whether the priority of the Liens and the Term Loan Lenders’ security interests have been impaired. This critical issue exposes the Term Loan Lenders to the risk of an order requiring the disgorgement of potentially hundreds of millions of dollars, which they have not been able to participate in litigating whatsoever because they were never officially made a part of the litigation.

65. Moreover, JPMorgan -- who is ultimately responsible for the filing of the Termination Statement and the stipulations extending time of service -- is now steadfastly insisting that the cross-claims against it arising from the filing of the Termination Statement are time-barred. The Term Loan Lenders are therefore in the untenable situation of entering a litigation that may have already adjudicated critical elements of claims against them during the six-year delay in service, and subjected them to potential liability, but potentially without recourse against the party that put them in this quagmire.

FIRST CLAIM FOR RELIEF
(BREACH OF THE TERM LOAN AGREEMENT)

66. The Cross-Claiming Term Loan Lenders repeat, reallege and incorporate by reference the allegations in paragraphs 1 through 65 as if fully set forth herein.

67. The Term Loan Agreement is a valid, binding, and enforceable agreement.

68. The Term Loan Agreement expressly prohibits 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 Loan Lenders unanimously consent to the filing. Neither of these conditions had occurred when JPMorgan authorized the filing of the Termination Statement.

69. JPMorgan was negligent, grossly negligent and acted with reckless disregard for the Term Loan Lenders' rights by authorizing the filing of the Termination Statement which has exposed the Term Loan Lenders to a judgment concluding that their security interest in the Collateral was unperfected at the time that the Term Loan was repaid, therefore subjecting them to the risk of disgorgement of funds received in connection with the payoff of the Term Loan.

70. In authorizing the filing of the Termination Statement, JPMorgan acted outside of the scope of its authority as Agent under the Term Loan Agreement and as secured party on the UCC-1 Term Loan Financing Statements.

71. The Cross-Claiming Term Loan Lenders have fully performed all obligations required of them to be performed under the Term Loan Agreement.

72. Any liability or losses incurred by the Cross-Claiming Term Loan Lenders in this Avoidance Action are the natural, probable, and foreseeable consequences of JPMorgan's

egregious negligent and grossly negligent breach of its obligations under the Term Loan Agreement.

73. Accordingly, as a result of JPMorgan's egregious breaches of contract, to the extent the Cross-Claiming Term Loan Lenders suffer damages in the form of liability or losses in this Avoidance Action, JPMorgan is obligated to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan.

**SECOND CLAIM FOR RELIEF
(NEGLIGENCE)**

74. The Cross-Claiming Term Loan Lenders repeat, reallege and incorporate by reference the allegations in paragraphs 1 through 73 as if fully set forth herein.

75. JPMorgan, as Agent under the Term Loan Agreement, owed a duty of care to the Term Loan Lenders.

76. JPMorgan additionally owed a duty of care to the Term Loan Lenders as the Secured Party on the UCC-1 Term Loan Financing Statements.

77. In authorizing the filing of the Termination Statement, JPMorgan acted outside of the scope of its authority as Agent under the Term Loan Agreement and as secured party on the UCC-1 Term Loan Financing Statements.

78. Because JPMorgan acted outside of the scope of its authority as Agent under the Term Loan Agreement, any provisions in the Term Loan Agreement limiting the Agent's liabilities with respect to the Agent's obligations and actions under the Term Loan Agreement do not apply.

79. The Cross-Claiming Term Loan Lenders have fully performed all obligations required of them to be performed under the Term Loan Agreement and Collateral Agreement.

80. Any liability or losses incurred by the Cross-Claiming Term Loan Lenders in this Avoidance Action are the natural, probable, and foreseeable consequences of JPMorgan's egregious breach of its obligations under the Term Loan Agreement and its duties as agent of the Term Loan Lenders.

81. Accordingly, as a result of JPMorgan's egregious breaches of its obligations and duties as agent of Term Loan Lenders, to the extent the Cross-Claiming Term Loan Lenders suffer damages in the form of liability or losses in this Avoidance Action, JPMorgan is obligated to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan.

THIRD CLAIM FOR RELIEF
(INDEMNIFICATION)

82. The Cross-Claiming Term Loan Lenders repeat, reallege and incorporate by reference the allegations in paragraphs 1 through 81 as if fully set forth herein.

83. The agent-principal relationship between JPMorgan and the Term Loan Lenders, as well as the terms of the parties' agreements, create an obligation for JPMorgan to indemnify the Cross-Claiming Term Loan Lenders for any resulting liabilities that the Cross-Claiming Term Loan Lenders incur in this Avoidance Action.

84. Indeed, in authorizing the filing of the Termination Statement, JPMorgan acted outside of the scope of its authority as Administrative Agent under the Term Loan and as secured party on the UCC-1 Term Loan Financing Statements.

85. The Cross-Claiming Term Loan Lenders have fully performed all obligations required of them to be performed under the Term Loan Agreement.

86. Any liability or losses incurred by the Cross-Claiming Term Loan Lenders in this Avoidance Action are the natural, probable, and foreseeable consequences of JPMorgan's egregious breach of its obligations under the Term Loan Agreement and the principal-agent relationship between JPMorgan and the Term Loan Lenders.

87. Accordingly, as a result of JPMorgan's egregious breaches of its obligations and duties as agent of Term Loan Lenders, to the extent the Cross-Claiming Term Loan Lenders suffer damages in the form of liability or losses in this Avoidance Action, JPMorgan is obligated to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan.

**FOURTH CLAIM FOR RELIEF
(BREACH OF AGENCY)**

88. The Cross-Claiming Term Loan Lenders repeat, reallege and incorporate by reference the allegations in paragraphs 1 through 87 as if fully set forth herein.

89. The agent-principal relationship between JPMorgan and the Term Loan Lenders, as well as the terms of the parties' agreements, requires JPMorgan to act in accordance with its duties to obey all reasonable instructions and directions of its principals and to act with due care.

90. In authorizing the filing of the Termination Statement, JPMorgan acted outside of the scope of its authority as Agent under the Term Loan Agreement and as secured party on the UCC-1 Term Loan Financing Statements, and in direct contravention of the express instruction of its principals.

91. JPMorgan further breached its obligations by failing to correct its egregious error and potentially averting any harm to the Term Loan Lenders.

92. Any liability or losses incurred by the Cross-Claiming Term Loan Lenders in this Avoidance Action are the natural, probable, and foreseeable consequences of JPMorgan's egregious breach of its obligations under the principal-agent relationship between JPMorgan and the Term Loan Lenders.

93. Accordingly, as a result of JPMorgan's egregious breaches of its obligations and duties as agent of the Term Loan Lenders, to the extent the Cross-Claiming Term Loan Lenders suffer damages in the form of liability or losses in this Avoidance Action, JPMorgan is obligated to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan.

FIFTH CLAIM FOR RELIEF
(NONCOMPLIANCE WITH THE UCC (§ 9-625))

94. The Cross-Claiming Term Loan Lenders repeat, reallege and incorporate by reference the allegations in paragraphs 1 through 93 as if fully set forth herein.

95. In addition to its role as Agent under the Term Loan, JPMorgan served as the secured party of record for the UCC-1 Term Loan Financing Statements.

96. When JPMorgan authorized the filing of the Termination Statement, JPMorgan acted outside of its capacity and authority as Agent under the Term Loan, and was acting as administrative agent for the Synthetic Lease.

97. JPMorgan, in its capacity as administrative agent for the Synthetic Lease, was not the secured party of record for the Term Loan.

98. JPMorgan's actions had the effect of authorizing the filing of the Termination Statement, without the authority or consent of the Term Loan Lenders.

99. Accordingly, JPMorgan failed to comply with UCC Section 9-509(d) because it 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.

100. JPMorgan's conduct exposes the Cross-Claiming Term Loan Lenders to a judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan. To the extent that the Cross-Claiming Term Loan Lenders incur any loss or liability in this Avoidance Action, such losses are a direct and proximate result of JPMorgan's actions.

101. Accordingly, to the extent the Cross-Claiming Term Loan Lenders suffer damages in the form of liability or losses in this Avoidance Action, JPMorgan is obligated to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan.

**SIXTH CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)**

102. The Cross-Claiming Term Loan Lenders repeat, reallege and incorporate by reference the allegations in paragraphs 1 through 101 as if fully set forth herein.

103. The Cross-Claiming Term Loan Lenders are each parties to the Term Loan Agreement, pursuant to which JPMorgan is Agent.

104. An actual and justiciable controversy and dispute exists between the Cross-Claiming Term Loan Lenders and JPMorgan concerning JPMorgan's obligation as Agent and the

party ultimately responsible for the filing of the Termination Statement, with respect to JPMorgan's obligation to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders for any liabilities incurred in connection with this Avoidance Action, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan.

105. JPMorgan was negligent, grossly negligent, and acted with reckless disregard for the Term Loan Lenders' rights by authorizing the filing of the Termination Statement which has exposed the Term Loan Lenders to a judgment concluding that their security interest in the Collateral was unperfected at the time that the Term Loan was repaid, therefore subjecting them to the risk of disgorgement of funds received in connection with the payoff of the Term Loan.

106. In authorizing the filing of the Termination Statement, JPMorgan acted outside of the scope of its authority as Agent under the Term Loan Agreement and as secured party on the UCC-1 Term Loan Financing Statements.

107. Therefore, the Cross-Claiming Term Loan Lenders are entitled to a judgment declaring that JPMorgan is obligated to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders for any liabilities incurred in connection with this Avoidance Action, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan.

PRAYER FOR RELIEF

WHEREFORE, the Cross-Claiming Term Loan Lenders seek relief as follows:

- a. On their First Claim for Relief, an order requiring JPMorgan to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders,

- including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan;
- b. On their Second Claim for Relief, an order requiring JPMorgan to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan;
 - c. On their Third Claim for Relief, an order requiring JPMorgan to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan;
 - d. On their Fourth Claim for Relief, an order requiring JPMorgan to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan;
 - e. On their Fifth Claim for Relief, an order requiring JPMorgan to reimburse, indemnify, and hold harmless the Cross-Claiming Term Loan Lenders, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan;
 - f. On their Sixth Claim for Relief, a judgment declaring that JPMorgan is obligated to reimburse, indemnify, and hold harmless the Cross-Claiming

Term Loan Lenders for any liabilities incurred in connection with this Avoidance Action, including the satisfaction of any judgment requiring the disgorgement of funds received in connection with the payoff of the Term Loan;

- g. Reasonable attorneys' fees and costs incurred in connection with this Avoidance Action;
- h. Pre- and post-judgment interest as authorized by law;
- i. Punitive damages, as authorized by law; and
- j. Such other relief as the Court may deem just and proper.

Dated: New York, New York
December 18, 2015

Respectfully submitted,

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