

**WACHTELL, LIPTON, ROSEN & KATZ**

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

**KELLEY DRYE & WARREN LLP**

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

Attorneys for Cross-Claim Defendant JPMorgan  
Chase Bank, N.A.

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

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (MG)
Debtors.	:	(Jointly Administered)
<hr/>		
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	:	Adversary Proceeding
Plaintiff,	:	Case No. 09-00504 (MG)
vs.	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for various lenders party to the Term Loan Agreement described herein, <i>et al.</i> ,	:	
Defendants.	:	

**ANSWER OF CROSS-CLAIM DEFENDANT  
JPMORGAN CHASE BANK, N.A.**

JPMorgan Chase Bank, N.A. (“JPMCB”), in its individual capacity and as  
administrative agent (“Administrative Agent”) under a term loan agreement, dated as of

November 29, 2006 (as amended, restated, supplemented or otherwise revised from time to time, the “Term Loan Agreement”), by its undersigned attorneys, for its Answer to the Cross-Claims dated December 18, 2015 (“Kasowitz Term Lender Cross-Complaint”) of a group of Term Loan Lenders (the “Kasowitz Term Lenders”), answers as follows:

1. JPMCB denies the allegations of paragraph 1 of the Kasowitz Term Lender Cross-Complaint.

2. JPMCB denies the allegations of paragraph 2 of the Kasowitz Term Lender Cross-Complaint.

3. JPMCB denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 3 of the Kasowitz Term Lender Cross-Complaint. JPMCB refers to the Term Loan Agreement and related documents for a complete and accurate statement of JPMCB’s role thereunder and otherwise denies the allegations of paragraph 3 of the Kasowitz Term Lender Cross-Complaint.

4. JPMCB admits that Motors Liquidation Company f/k/a General Motors Corporation and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on June 1, 2009 in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), and otherwise denies the allegations of the first, second, third, fourth and fifth sentences of paragraph 4 of the Kasowitz Term Lender Cross-Complaint. JPMCB admits that after the entry of the DIP Order (as defined in the Kasowitz Term Lender Cross-Complaint) the Debtors transferred \$1,477,328,333.33 to JPMCB, as Administrative Agent, refers to the DIP Order for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of the sixth sentence of paragraph 4 of the Kasowitz Term Lender Cross-Complaint. JPMCB refers to the complaint in this adversary

proceeding for a complete and accurate statement of the claims therein, and otherwise denies the allegations of the seventh sentence of paragraph 4 of the Kasowitz Term Lender Cross-Complaint.

5. JPMCB refers to the public record in this case for a complete and accurate account of the filings, orders, and events described in paragraph 5 of the Kasowitz Term Lender Cross-Complaint, refers to its affirmative defenses with respect to the statute of limitations, and otherwise denies the allegations of paragraph 5 of the Kasowitz Term Lender Cross-Complaint.

6. JPMCB denies the allegations of paragraph 6 of the Kasowitz Term Lender Cross-Complaint.

7. JPMCB refers to the Kasowitz Term Lender Cross-Complaint for a complete and accurate statement of the claims therein, and otherwise denies the allegations of paragraph 7 of the Kasowitz Term Lender Cross-Complaint.

8. JPMCB avers that JPMCB is a National Bank formed under the laws of the United States of America, and its headquarters has been located in the State of Ohio since November 13, 2004, as designated in its articles of association on file with the Office of the Comptroller of the Currency.

9. JPMCB denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Kasowitz Term Lender Cross-Complaint.

10. JPMCB states that the allegations of paragraph 10 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 10 of the Kasowitz Term Lender Cross-Complaint and avers that the Bankruptcy Court lacks subject matter jurisdiction over the cross-claims asserted in the Kasowitz Term Lender Cross-Complaint.

In accordance with Federal Rule of Bankruptcy Procedure 7012(b) and Local Bankruptcy Rule 7012-1, JPMCB denies that any of the claims in the Kasowitz Term Lender Cross-Complaint are “core” under 28 U.S.C. § 157(b), denies that the Bankruptcy Court has authority to enter a final judgment or order consistent with Article III of the United States Constitution, and further states that it does not consent to the entry of final orders or judgment by the Bankruptcy Court.

11. JPMCB states that the allegations of paragraph 11 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 11 of the Kasowitz Term Lender Cross-Complaint.

12. JPMCB admits that the Term Loan provided GM and certain of its subsidiaries with approximately \$1.5 billion in financing and was syndicated to various lenders, refers to the Term Loan Agreement and the Collateral Agreement (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 12 of the Kasowitz Term Lender Cross-Complaint.

13. JPMCB admits that it was the Administrative Agent under the Term Loan Agreement, refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 13 of the Kasowitz Term Lender Cross-Complaint.

14. JPMCB admits the allegations of paragraph 14 of the Kasowitz Term Lender Cross-Complaint.

15. JPMCB refers to the Term Loan Agreement and the Collateral Agreement (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate

statement of the terms thereof, and otherwise denies the allegations of paragraph 15 of the Kasowitz Term Lender Cross-Complaint.

16. JPMCB refers to the Term Loan Agreement and the Collateral Agreement (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 16 of the Kasowitz Term Lender Cross-Complaint.

17. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof.

18. JPMCB refers to the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 18 of the Kasowitz Term Lender Cross-Complaint.

19. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 19 of the Kasowitz Term Lender Cross-Complaint.

20. JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 20 of the Kasowitz Term Lender Cross-Complaint.

21. JPMCB refers to the Term Loan Agreement and the various agreements pertaining to the Synthetic Lease for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 21 of the Kasowitz Term Lender Cross-Complaint.

22. JPMCB admits that The Chase Manhattan Bank was named to serve as the Administrative Agent for the Synthetic Lease, and avers that effective December 31, 2000, J.P. Morgan & Co. Incorporated merged with and into The Chase Manhattan Corporation under the name J.P. Morgan Chase & Co., that effective July 1, 2004, Bank One Corporation merged with and into J.P. Morgan Chase & Co. under the name J.P. Morgan Chase & Co., that effective July 20, 2004, the corporation changed its name from J.P. Morgan Chase & Co. to JPMorgan Chase & Co., and that JPMCB, a wholly-owned subsidiary of JPMorgan Chase & Co. and successor by merger to The Chase Manhattan Bank, continued as Administrative Agent under the Synthetic Lease, and acted as Secured Party of Record for the Synthetic Lease.

23. JPMCB refers to the various agreements pertaining to the Synthetic Lease for a complete and accurate statement of the terms thereof.

24. JPMCB refers to the agreements and the UCC-1 financing statements pertaining to the Synthetic Lease for a complete and accurate statement of the terms thereof.

25. JPMCB denies the allegations of paragraph 25 of the Kasowitz Term Lender Cross-Complaint.

26. JPMCB refers to the various agreements pertaining to the Synthetic Lease for a complete and accurate statement of the terms thereof, admits that Mr. Duker was informed that GM intended to repay the outstanding amount due on or about October 1, 2008, and otherwise denies the allegations of paragraph 26 of the Kasowitz Term Lender Cross-Complaint.

27. JPMCB admits that Mayer Brown LLP (“Mayer Brown”) represented General Motors in connection with the repayment of the Synthetic Lease, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Kasowitz Term Lender Cross-Complaint.

28. JPMCB admits that JPMCB was represented by the law firm of Simpson Thacher & Bartlett LLP (“Simpson Thacher”) in matters relating to the Synthetic Lease transaction, and otherwise denies the allegations of paragraph 28 of the Kasowitz Term Lender Cross-Complaint.

29. JPMCB denies the allegations of paragraph 29 of the Kasowitz Term Lender Cross-Complaint.

30. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 30 of the Kasowitz Term Lender Cross-Complaint.

31. JPMCB denies the allegations of paragraph 31 of the Kasowitz Term Lender Cross-Complaint.

32. JPMCB admits that a Wells Fargo employee and Mr. Duker exchanged emails on October 10, 2008 regarding the Term Loan, refers to those emails for a complete and accurate statement of the contents thereof, and otherwise denies the allegations of paragraph 32 of the Kasowitz Term Lender Cross-Complaint.

33. JPMCB denies the allegations of paragraph 33 of the Kasowitz Term Lender Cross-Complaint.

34. JPMCB denies the allegations of paragraph 34 of the Kasowitz Term Lender Cross-Complaint.

35. JPMCB denies the allegations of the first, second and third sentences of paragraph 35 of the Kasowitz Term Lender Cross-Complaint and avers the draft closing checklist identified a UCC-1 financing statement with a number that corresponded to the Main Term Loan UCC-1 (as defined in the Kasowitz Term Lender Cross-Complaint) and that Mayer

Brown sent draft closing documents and a draft escrow agreement to JPMCB's counsel. JPMCB admits the allegations of the fourth sentence of paragraph 35 of the Kasowitz Term Lender Cross-Complaint. In response to the fifth sentence of paragraph 35 of the Kasowitz Term Lender Cross-Complaint, JPMCB refers to the draft escrow instructions circulated by Mayer Brown for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of the fifth sentence of paragraph 35 of the Kasowitz Term Lender Cross-Complaint.

36. JPMCB denies the allegations of paragraph 36 of the Kasowitz Term Lender Cross-Complaint.

37. JPMCB denies the allegations of paragraph 37 of the Kasowitz Term Lender Cross-Complaint.

38. JPMCB denies the allegations of paragraph 38 of the Kasowitz Term Lender Cross-Complaint.

39. JPMCB admits that GM or Mayer Brown caused a UCC-3 termination statement, which contained a filing number pertaining to a UCC-1 financing statement filed in connection with the Term Loan, to be filed with the Delaware Secretary of State on or about November 1, 2008, and otherwise denies the allegations of paragraph 39 of the Kasowitz Term Lender Cross-Complaint.

40. JPMCB states that the allegations of paragraph 40 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 40 of the Kasowitz Term Lender Cross-Complaint.

41. JPMCB denies the allegations of paragraph 41 of the Kasowitz Term Lender Cross-Complaint.

42. JPMCB denies the allegations of paragraph 42 of the Kasowitz Term Lender Cross-Complaint.

43. JPMCB denies the allegations of paragraph 43 of the Kasowitz Term Lender Cross-Complaint.

44. JPMCB denies the allegations of paragraph 44 of the Kasowitz Term Lender Cross-Complaint.

45. JPMCB admits that Mayer Brown sent an email to Simpson Thacher on October 15, 2008 attaching a draft of a closing checklist and drafts of closing documents and that Simpson Thacher forwarded that email to Mr. Duker, refers to those emails for a complete and accurate statement of the contents thereof, and otherwise denies the allegations of paragraph 45 of the Kasowitz Term Lender Cross-Complaint.

46. JPMCB denies the allegations of paragraph 46 of the Kasowitz Term Lender Cross-Complaint, and avers that, as noted in paragraph 24 of the Kasowitz Term Lender Cross-Complaint, UCC-1 financing statements relating to the Synthetic Lease were filed up to and including 2007.

47. JPMCB denies the allegations of paragraph 47 of the Kasowitz Term Lender Cross-Complaint.

48. JPMCB denies the allegations of paragraph 48 of the Kasowitz Term Lender Cross-Complaint.

49. JPMCB denies the allegations of paragraph 49 of the Kasowitz Term Lender Cross-Complaint.

50. JPMCB denies the allegations of paragraph 50 of the Kasowitz Term Lender Cross-Complaint.

51. JPMCB denies the allegations of paragraph 51 of the Kasowitz Term Lender Cross-Complaint.

52. JPMCB admits that between January and March 2009, the parties to the Term Loan, including representatives of Term Loan Lenders, negotiated an amendment to the Term Loan Agreement and refers to the amendment dated March 4, 2009 for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 52 of the Kasowitz Term Lender Cross-Complaint.

53. JPMCB denies the allegations of paragraph 53 of the Kasowitz Term Lender Cross-Complaint.

54. JPMCB admits the allegations of paragraph 54 of the Kasowitz Term Lender Cross-Complaint.

55. JPMCB admits the allegations of paragraph 55 of the Kasowitz Term Lender Cross-Complaint.

56. JPMCB admits the allegations of paragraph 56 of the Kasowitz Term Lender Cross-Complaint.

57. JPMCB refers to the DIP Motion (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms set forth therein.

58. JPMCB avers that after the entry of the DIP Order the Debtors transferred \$1,477,328,333.33 to JPMCB, as Administrative Agent, and refers to the DIP Order for a complete and accurate account of the terms thereof.

59. JPMCB admits that on or about March 1, 2013, this Court entered a Decision on Motions for Summary Judgment (“Decision”) [Adv. Pro. Dkt. No. 71], a Judgment (“Judgment”) [Adv. Pro. Dkt. No. 73], and an Order on Cross Motions for Summary Judgment

(“Order”) [Adv. Pro. Dkt. No. 72] and refers to the Decision, the Judgment, and the Order for a complete and accurate account of the terms set forth therein.

60. JPMCB admits that on or about January 21, 2015, the United States Court of Appeals for the Second Circuit entered a decision (the “Second Circuit Decision”) and refers to the Second Circuit Decision for a complete and accurate account of the terms set forth therein.

61. JPMCB refers to the amended complaint and the public record in this case for a complete and accurate account of the pleadings and events referenced in paragraph 61 of the Kasowitz Term Lender Cross-Complaint.

62. JPMCB admits that following the filing of the complaint in 2009, JPMCB and the Committee agreed to request the Court to permit the Committee to withhold service of the complaint on defendants other than JPMCB, and avers that JPMCB informed the Term Lenders via Intralinks of this agreement, that the Court entered a stipulation in the public record allowing the Committee to withhold service of the Complaint on the Term Lenders, and that no Term Lender objected to the Court’s stipulation.

63. JPMCB refers to the public record in this case for a complete and accurate account of the hearings, filings, and orders described in paragraph 63 of the Kasowitz Term Lender Cross-Complaint, and otherwise denies the allegations of paragraph 63 of the Kasowitz Term Lender Cross-Complaint.

64. JPMCB denies the allegations of paragraph 64 of the Kasowitz Term Lender Cross-Complaint.

65. JPMCB refers to its affirmative defenses with respect to the statute of limitations, and otherwise denies the allegations of paragraph 65 of the Kasowitz Term Lender Cross-Complaint.

66. JPMCB repeats and re-alleges its responses to paragraphs 1 through 65 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

67. JPMCB states that the allegations of paragraph 67 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required.

68. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 68 of the Kasowitz Term Lender Cross-Complaint.

69. JPMCB denies the allegations of paragraph 69 of the Kasowitz Term Lender Cross-Complaint.

70. JPMCB states that the allegations of paragraph 70 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 70 of the Kasowitz Term Lender Cross-Complaint.

71. JPMCB states that the allegations of paragraph 71 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71 of the Kasowitz Term Lender Cross-Complaint.

72. JPMCB denies the allegations of paragraph 72 of the Kasowitz Term Lender Cross-Complaint.

73. JPMCB denies the allegations of paragraph 73 of the Kasowitz Term Lender Cross-Complaint.

74. JPMCB repeats and re-alleges its responses to paragraphs 1 through 73 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

75. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 75 of the Kasowitz Term Lender Cross-Complaint.

76. JPMCB refers to the Term Loan Agreement and UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 76 of the Kasowitz Term Lender Cross-Complaint.

77. JPMCB states that the allegations of paragraph 77 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 77 of the Kasowitz Term Lender Cross-Complaint.

78. JPMCB denies the allegations of paragraph 78 of the Kasowitz Term Lender Cross-Complaint.

79. JPMCB states that the allegations of paragraph 79 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraph 79 of the Kasowitz Term Lender Cross-Complaint.

80. JPMCB denies the allegations of paragraph 80 of the Kasowitz Term Lender Cross-Complaint.

81. JPMCB denies the allegations of paragraph 81 of the Kasowitz Term Lender Cross-Complaint.

82. JPMCB repeats and re-alleges its responses to paragraphs 1 through 81 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

83. JPMCB denies the allegations of paragraph 83 of the Kasowitz Term Lender Cross-Complaint.

84. JPMCB states that the allegations of paragraph 84 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 84 of the Kasowitz Term Lender Cross-Complaint.

85. JPMCB states that the allegations of paragraph 85 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85 of the Kasowitz Term Lender Cross-Complaint.

86. JPMCB denies the allegations of paragraph 86 of the Kasowitz Term Lender Cross-Complaint.

87. JPMCB denies the allegations of paragraph 87 of the Kasowitz Term Lender Cross-Complaint.

88. JPMCB repeats and re-alleges its responses to paragraphs 1 through 87 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

89. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 89 of the Kasowitz Term Lender Cross-Complaint.

90. JPMCB states that the allegations of paragraph 90 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 90 of the Kasowitz Term Lender Cross-Complaint.

91. JPMCB denies the allegations of paragraph 91 of the Kasowitz Term Lender Cross-Complaint.

92. JPMCB denies the allegations of paragraph 92 of the Kasowitz Term Lender Cross-Complaint.

93. JPMCB denies the allegations of paragraph 93 of the Kasowitz Term Lender Cross-Complaint.

94. JPMCB repeats and re-alleges its responses to paragraphs 1 through 93 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

95. JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 95 of the Kasowitz Term Lender Cross-Complaint.

96. JPMCB states that the allegations of paragraph 96 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 96 of the Kasowitz Term Lender Cross-Complaint.

97. JPMCB states that the allegations of paragraph 97 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required.

98. JPMCB denies the allegations of paragraph 98 of the Kasowitz Term Lender Cross-Complaint.

99. JPMCB denies the allegations of paragraph 99 of the Kasowitz Term Lender Cross-Complaint.

100. JPMCB denies the allegations of paragraph 100 of the Kasowitz Term Lender Cross-Complaint.

101. JPMCB denies the allegations of paragraph 101 of the Kasowitz Term Lender Cross-Complaint.

102. JPMCB repeats and re-alleges its responses to paragraphs 1 through 101 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

103. JPMCB admits that JPMCB was the Administrative Agent pursuant to the Term Loan Agreement, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 103 of the Kasowitz Term Lender Cross-Complaint.

104. JPMCB states that the allegations of paragraph 104 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 104 of the Kasowitz Term Lender Cross-Complaint.

105. JPMCB denies the allegations of paragraph 105 of the Kasowitz Term Lender Cross-Complaint.

106. JPMCB states that the allegations of paragraph 106 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 106 of the Kasowitz Term Lender Cross-Complaint.

107. JPMCB denies the allegations of paragraph 107 of the Kasowitz Term Lender Cross-Complaint.

### **ADDITIONAL DEFENSES**

JPMCB's assertion of defenses herein is not a concession that JPMCB bears the burden of proof or persuasion on any issue as to which the Kasowitz Term Lenders bear the burden of proof or persuasion. JPMCB reserves the right to supplement, amend, or delete any or all of the following 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.

#### **FIRST DEFENSE**

The Kasowitz Term Lender Cross-Complaint fails to state a claim against JPMCB upon which relief may be granted.

#### **SECOND DEFENSE**

The Bankruptcy Court lacks subject matter jurisdiction over the claims asserted in the Kasowitz Term Lender Cross-Complaint. The claims asserted in the Kasowitz Term Lender Cross-Complaint are not subject to jurisdiction under 28 U.S.C. § 1334, and the Bankruptcy Court is not empowered to exercise supplemental jurisdiction under 28 U.S.C. § 1367 or otherwise.

#### **THIRD DEFENSE**

The claims asserted in the Kasowitz Term Lender Cross-Complaint are barred by provisions of the Term Loan Agreement, including: (a) section 8.04 of the Term Loan Agreement, which provides that JPMCB "shall be entitled to rely, and shall be fully protected in relying" upon "advice and statements of legal counsel (including, without limitation, any counsel to the Borrower)"; (b) section 8.02 of the Term Loan Agreement, which permits JPMCB to execute any of its duties "by or through agents or attorneys-in-fact" and states that JPMCB "shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by

it with reasonable care”; (c) section 8.03 of the Term Loan Agreement, which provides that JPMCB shall not be liable “for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except for its or such Person’s own gross negligence or willful misconduct)”; and (d) section 8.06 of the Term Loan Agreement, which provides that each lender “expressly acknowledges” that JPMCB has not “made any representations or warranties to it,” and that each lender “represents that it will, independently and without reliance upon the Agent . . . continue to make its own credit analysis, appraisals and decisions” with respect to the Term Loan.

#### **FOURTH DEFENSE**

The claims asserted in the Kasowitz Term Lender Cross-Complaint that are not predicated on express provisions of the Term Loan Agreement are barred because, under section 8.01 of the Term Loan Agreement, “[n]otwithstanding any provision to the contrary elsewhere in this Agreement or in any other Loan Document, the Agent shall not have any duties or responsibilities, except those expressly set forth herein or therein, or any fiduciary relationship with any Lender or any Affiliate of such Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent.” Among other things, section 4.03 of the Collateral Agreement (as defined in the Kasowitz Term Lender Cross-Complaint) provides that General Motors, not JPMCB, “shall maintain the security interest created by this Agreement.” The Term Loan Agreement and related documents do not require JPMCB to maintain the security interest, and no such duty should be implied.

**FIFTH DEFENSE**

The claims asserted in the Kasowitz Term Lender Cross-Complaint are barred by applicable statutes of limitations.

**SIXTH DEFENSE**

Any claims asserted in the Kasowitz Term Lender Cross-Complaint by entities that are not defendants in the Avoidance Action are barred for lack of standing.

**SEVENTH DEFENSE**

Any claims asserted in the Kasowitz Term Lender Cross-Complaint relating to rights or duties under agreements pursuant to which JPMCB sold or purchased Term Loan interests are unripe.

**EIGHTH DEFENSE**

The Kasowitz Term Lenders' claims for damages are barred because the losses or damages alleged are speculative, uncertain, or otherwise not cognizable.

**NINTH DEFENSE**

The Kasowitz Term Lenders' claims are barred because JPMCB's conduct was not the cause of any injury, losses, or damages alleged by the Kasowitz Term Lenders, and/or any such injury, loss, or damages were caused by the intervening or superseding acts of third parties.

**TENTH DEFENSE**

The Kasowitz Term Lenders' claims are barred, in whole or in part, by the doctrines of collateral estoppel, res judicata, and/or law of the case.

**ELEVENTH DEFENSE**

The Kasowitz Term Lenders' claims sounding in tort are barred because they are duplicative of the Kasowitz Term Lenders' claims for breach of express contractual provisions.

**TWELFTH DEFENSE**

The Kasowitz Term Lenders' claims for equitable relief are barred because the Kasowitz Term Lenders have an adequate remedy at law if their claims are meritorious, which they are not.

**THIRTEENTH DEFENSE**

As of the date the Termination Statement was filed, JPMCB did not owe duties to lenders who purchased Term Loan interests after that date.

**FOURTEENTH DEFENSE**

The Kasowitz Term Lenders' claims are barred, in whole or in part, by the doctrines of laches and equitable estoppel.

**FIFTEENTH DEFENSE**

The Kasowitz Term Lenders' claims are barred, in whole or in part, by the doctrines of assumption of risk, estoppel and waiver.

WHEREFORE, JPMCB requests judgment as follows: (1) entering judgment in favor of JPMCB against the Kasowitz Term Lenders and dismissing the Kasowitz Term Lender Cross-Complaint with prejudice; (2) awarding JPMCB the costs of defending this action, including attorneys' fees and expenses; and (3) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
January 27, 2016

Respectfully submitted,

WACHTELL, LIPTON, ROSEN & KATZ

By: /s/ Harold S. Novikoff  
Harold S. Novikoff  
Marc Wolinsky  
Emil A. Kleinhaus  
51 W. 52nd St.  
New York, NY 10019  
(212) 403-1000

KELLEY DRYE & WARREN LLP

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

*Attorneys for Cross-Claim Defendant JPMorgan Chase  
Bank, N.A.*