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Attorneys for Defendant Alticor Inc.

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

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

**DEFENDANT ALTICOR INC.'S REPLY TO PLAINTIFF'S OMNIBUS
MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO
DISMISS AND FOR JUDGMENT ON THE PLEADINGS**

Defendant Alticor Inc. (“**Alticor**”), by and through its undersigned counsel, hereby submits this reply to *Plaintiff's Omnibus Memorandum of Law in Opposition to Defendants' Motions to Dismiss and for Judgment on the Pleadings* (“**Plaintiff's Opposition Brief**”; Dkt. No. 427). Alticor's reply is set forth below:

I. Alticor Had No Prior Notice of this Adversary Proceeding

For the reasons set forth in the Omnibus Reply In Support Of Certain Term Lenders' Rule 12 Motions (the “**Term Lenders' Reply**”), actual notice is no substitute for service of process in this Adversary Proceeding.¹ The arguments in the Term Lenders' Reply proceed on the assumption that Plaintiff could show that the Term Lenders had actual knowledge of this litigation. Alticor submits this separate reply to underscore that Alticor did not have actual notice of the Adversary Proceeding before it was served with the First Amended Complaint in 2015.

Unlike many of the other defendants in this Adversary Proceeding, Alticor is not a hedge fund, mutual fund, asset management company, insurance company, or other financial industry firm. Rather, Alticor (including its affiliates) is a Michigan-based consumer products company. Alticor is privately held and is the parent company of the Amway family of affiliates, which manufacture nutrition, beauty, and home products and distribute those products worldwide. Alticor's world headquarters are located in Michigan. While other defendants may have had knowledge of this Adversary Proceeding because their primary business is in the financial services industry, the same is not true for Alticor.

¹ Alticor plans to join Term Lenders' Reply in its entirety.

After being served with the summons and First Amended Complaint in June 2015, Alticor did conduct a search for documents related to the Term Loan Transaction that is the subject of this Adversary Proceeding. Alticor has uncovered no evidence whatsoever that it, or any of its employees or representatives, received any written, oral, or other notice of the Adversary Proceeding before June 2015. (See Exhibit 1, Declaration of Jeffrey Tuori, at ¶¶ 3, 6.) Further, Alticor has no evidence that it knew of the Adversary Proceeding before service of the First Amended Complaint. (*Id.* at ¶ 4.) Finally, Alticor has no evidence that it received any sort of notification regarding the Intralinks site established by JPMorgan Chase Bank (or another third party) for the Term Lenders, and Alticor has no evidence that it registered or otherwise accessed the site. (*Id.* at ¶5.)

Alticor has received documentation from other parties to this Adversary Proceeding suggesting that Neuberger Berman Fixed Income LLC (“**Neuberger Berman Fixed Income**”) may have acted as Alticor’s “Collateral Manager” with respect to the Term Loan Transaction. (*Id.* at ¶ 6.) Neuberger Berman Fixed Income did not, however, have any authority to act on behalf of Alticor with respect to litigation or other legal proceedings, including but not limited to this Adversary Proceeding. (*Id.*) As demonstrated by Alticor’s total lack of knowledge of the pendency of the Adversary Proceeding, Neuberger Berman Fixed Income did not notify Alticor of the Adversary Proceeding or that it was a defendant or potential defendant in any pending proceeding regarding the Term Loan Transaction. (See *id.* at ¶ 4.) Alticor was not a creditor in the GM bankruptcy. It had no involvement with the bankruptcy except its involvement stemming from its interest in the Term Loan Transaction, a one-time investment.

II. Even if Neuberger Berman Fixed Income Had Actual Notice, Alticor Did Not

It is undisputed that Plaintiff never even attempted to serve Alticor with the summons and complaint. Alticor has no knowledge of whether Neuberger Berman had any knowledge of this Adversary Proceeding.²

Based on documentation that Alticor has been provided, it appears that Neuberger Berman Fixed Income acted as Alticor's "Collateral Manager" for its involvement in the Term Loan Transaction. Neuberger Berman Fixed Income did not act as Alticor's attorney or have any other kind of agency relationship with Alticor. (*Id.* at ¶ 6.) As a result, even if Neuberger Berman Fixed Income had actual notice of this Adversary Proceeding (which may not be the case), notice from the Plaintiff to Neuberger Berman Fixed Income would not constitute notice to Alticor. Bankruptcy courts recognize that only in specific circumstances will notice to an agent or related party constitute notice to a defendant or creditor. For example, "[a]n attorney does not become his client's agent for service of process solely by reason of serving in the capacity as attorney." *In re Cruisehone, Inc.*, 278 B.R. 325, 333 (Bankr. E.D.N.Y. 2002) (citations omitted). Likewise, when another entity is not specifically designated to receive service of process for another, service on the first does not constitute service on the second. *In re Solkow*, 165 B.R. 763, 767 (Bankr. E.D.N.Y. 1994) (holding that where "[n]either the arbitration board of the New York Stock Exchange, nor its counsel, is affiliated with the [creditors,] and "[n]ot one of these entities was designated by [the creditors] as an agent authorized to receive service," "[d]ebtor did not properly serve the [creditors].")

² It appears, based on Exhibit J to Plaintiff's Opposition Brief, that two employees or representatives of "Neuberger Berman LLC" participated in a conference call with JP Morgan. It is unclear whether "Neuberger Berman LLC" refers to Neuberger Berman Fixed Income, with whom Alticor apparently interacted, or another Neuberger Berman entity. By contrast, it is clear that Alticor did not participate in the call.

In short, until it was served with the First Amended Complaint in June 2015, Alticor did not have actual notice of this Adversary Proceeding, whether through the Intralinks site, through Neuberger Berman, or through service of process.

WHEREFORE, Alticor respectfully requests that this Court dismiss the First Amended Complaint in its entirety and grant Alticor such other and further relief as may be proper.

Dated: March 30, 2016

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Attorneys for Defendant Alticor Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2016, a copy of the foregoing Reply was served via the Court's CM/ECF system on all subscribed parties.

/s/ Gordon J. Toering
Gordon J. Toering

EXHIBIT 1

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

DECLARATION OF JEFFREY TUORI

I, Jeffrey Tuori, declare as follows:

1. I am Vice President and Controller at Alticor Inc. (“**Alticor**”), a defendant in the above-captioned adversary proceeding (this “**Adversary Proceeding**”). Alticor has delegated to me the responsibility for investigating the matters that are the subject of this Declaration. This Declaration is based on matters on which I have personal knowledge or matters on which I have conducted reasonable investigation.

2. In its First Amended Complaint, Plaintiff has asserted that Alticor was a “**Term Lender**” and is therefore liable to repay certain monies that Alticor received from the above-captioned debtors.

3. I have found no evidence that Alticor received notice (written, oral or otherwise) from the Plaintiff, JPMorgan Chase Bank, N.A. or any third party that this Adversary Proceeding had been filed against Alticor until Alticor was served with the First Amended Complaint in this Adversary Proceeding in June 2015.

4. I have found no evidence that Alticor had knowledge that it was a defendant or a party to this Adversary Proceeding before Alticor was served with the First Amended Complaint in June 2015.

5. It is my understanding that, on March 4, 2016, Plaintiff filed its *Omnibus Memorandum of Law in Opposition to Defendants’ Motions to Dismiss and for Judgment on the Pleadings* (Dkt. No. 427) (“**Plaintiff’s Opposition Brief**”). In Plaintiff’s Opposition Brief, Plaintiff states that notice of this Adversary Proceeding was given to Term Lenders pursuant to an “Intralinks” electronic site. I found no evidence that Alticor had either registered with the Intralinks site or received any electronic notices or other notices from the Intralinks site.

6. Due to the passage of time (the transactions at issue in this Adversary Proceeding took place in 2009), Alticor has been unable to obtain any internal documentation or information related to the transactions that are the subject of this Adversary Proceeding. However, based on information that Alticor has been able to obtain from third parties, Alticor understands that Neuberger Berman Fixed Income LLC (“**Neuberger Berman**”) may have acted as “Collateral Manager” for Alticor with respect to the indebtedness owed to Alticor under the November 29, 2006 Term Loan Agreement (the “**Term Loan Transaction**”) that is the subject of the Adversary Proceeding. In any event, Neuberger Berman had no authority to act on behalf of Alticor in connection with any litigation, including without limitation this Adversary Proceeding.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.


Jeffrey Tuori

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