HEARING DATE AND TIME: Not Yet Scheduled

Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
	:	**09-50026 (REG)**
	:	**(Jointly Administered)**
MOTORS LIQUIDATION COMPANY, *et al.*,	:	
f/k/a General Motors Corp., *et al.*	:	
	:	
Debtors.	:	

DEBTORS' CONSOLIDATED OPPOSITION TO REQUEST OF LISA GROSS FOR RELIEF FROM THE AUTOMATIC STAY [DOCKET NO. 5179] AND REQUEST FOR RELIEF TO FILE CLAIM [DOCKET NO. 5178]

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

STATUTES

TO THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE:

Motors Liquidation Company (f/k/a General Motors Corporation) ("**MLC**") and its affiliated debtors, as debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), hereby submit this consolidated opposition to two motions filed by Lisa Gross ("**Movant**") *pro se* styled as (i) Request for Relief from Automatic Stay [Docket No. 5179] (the "**Lift Stay Motion**") and (ii) Request for Leave to File Claim [Docket No. 5178] (the "**Claim Motion**" and together with the Lift Stay Motion, the "**Motions**"). In support hereof the Debtors respectfully represent:

PRELIMINARY STATEMENT

1. Movant seeks to lift the automatic stay to proceed with a prepetition appeal (the "**Appeal**") of an employment discrimination lawsuit pending against MLC in the United States Court of Appeals for the Tenth Circuit (the "**Appeals Court**"). Additionally, Movant seeks leave to file a proof of claim against "whichever . . . party is the currently responsible party." (Claim Mot. at 1-2). Both the Motions should be denied because it is undisputed that General Motors, LLC, a non-debtor entity and purchaser of substantially all of the Debtors' assets, assumed liability for the employment discrimination claims underlying Movant's Appeal. Accordingly, relief from the automatic stay is not necessary to proceed with the Appeal as to General Motors, LLC, and Movant need not file a proof of claim to proceed with her employment discrimination claims against General Motors, LLC.

2. To the extent that Movant desires to proceed with the Appeal as to the Debtors notwithstanding that the Debtors did not retain liability for the issues underlying the appeal, Movant fails to meet her burden of establishing good cause to truncate the statutorily imposed breathing spell to which the Debtors are entitled. Likewise, to the extent Movant seeks to file any claims against the Debtors that were not assumed by General Motors, LLC, Movant fails to meet her burden to establish any ground for allowing her to file a proof of claim four months after expiration of the bar date.

BACKGROUND

The Tenth Circuit Appeal

3. Movant is the appellant in the Appeal pending before the United States Court of Appeals for the Tenth Circuit, case number 08-3236. The Appeal arises from an employment discrimination case alleging claims under Title VII of the Civil Rights Act of 1964, which Movant commenced against General Motors Corporation ("**GM**") in October 2006 in the United States District Court for the District of Kansas (the "**Kansas Case**"). As indicated in summary judgment briefing in the Kansas Case, attached hereto as Exhibit A, Movant was employed by GM from February 9, 2004 to January 13, 2006, during which time she was a member of the United Auto Workers (UAW) union and the terms of her employment were governed by a collective bargaining agreement. (Ex. A, 1). The Kansas Case was dismissed with prejudice on July 24, 2008, and Movant commenced the Appeal on August 20, 2008.

The Bankruptcy Case

4. On June 1, 2009 (the "**Commencement Date**"), the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The commencement of the Debtors' chapter 11 cases triggered the automatic stay of all litigation pending against the Debtors, including the Appeal, pursuant to section 362 of the Bankruptcy Code.

5. On June 19, 2009, Movant filed a letter in these chapter 11 cases indicating that she objected to any language in the filings of the Debtors that would dissolve her claims in the bankruptcy or dissolve her claims in the Tenth Circuit Court of Appeals [Docket No. 2248]. The Debtors responded by sending Movant a letter via U.S. mail and e-mail dated June 25, 2009, in which they referred her to counsel for the Unsecured Creditors Committee to answer any questions she may have about filing a proof of claim in these chapter 11 cases. The Debtors' June 25, 2009 letter is attached hereto as Exhibit B.

6. On July 10, 2009, the Debtors consummated the sale of substantially all of their assets to NGMCO, Inc. (n/k/a General Motors, LLC), a United States Treasury-sponsored purchaser, pursuant to section 363 of the Bankruptcy Code and that certain Amended and Restated Master Sale and Purchase Agreement ("**MSPA**").
Under section 2.3(a)(xiii) of the MSPA, General Motors, LLC assumed liability for employment discrimination claims brought by "any Employee that is or was covered by the UAW Collective Bargaining Agreement."

7. On September 16, 2009, the Bankruptcy Court entered an order (the "**Bar Date Order**") establishing November 30, 2009 as the deadline for each person or entity

to file a proof of claim based on any prepetition claims against the Debtors [Docket No. 4079]. The Bar Date Order states that any party that fails to file a proof of claim on or before the bar date shall be forever barred, estopped and enjoined from asserting such claims against the Debtors and the Debtors shall be forever discharged from any and all indebtedness or liability with respect to such claim.

8. As indicated in the mailing records attached hereto as Exhibit C, the court-appointed claims agent in these chapter 11 cases sent notice of the bar date and a proof of claim form to Movant at three different addresses prior to expiration of the bar date. First the bar date package was sent to Movant at 1310 Wabash Ave, Kansas City, MO 64127, the address from which Movant sent the June 19, 2009 letter to the Court. After follow-up address searches were performed, the bar date package was mailed to Movant at 619 N Gallatin St., Liberty, MO 64068, and subsequently to 6604 E 12th St., Kansas City, MO 64126 on November 18, 2009.

9. To date, the claims register in these chapter 11 cases does not reflect a proof of claim filed by or on behalf of Movant.

The Lift Stay Motions

10. On February 10, 2010, Movant filed a motion for relief from the automatic stay with the Appeals Court. MLC's counsel in the Appeal responded to the lift stay motion filed in the Appeal by noting that the Appeal could proceed if the Appeals Court "enters an Order substituting General Motors LLC as the proper and new Appellee in this matter going forward." MLC's response to the lift stay motion in the Appeal is attached hereto as Exhibit D. The Appeals Court denied the lift stay motion noting that it "has no authority to grant relief from the automatic stay. The bankruptcy court is the proper

forum in which to request relief from an automatic stay." The Appeals Court's Order is attached hereto as Exhibit E.

11. On March 2, 2010, Movant filed the instant Lift Stay Motion in these chapter 11 cases. The Lift Stay Motion seeks "relief from the automatic stay regarding the Title 7 in 10th Circuit due to this chapter 11 with the General Motors Corporation of which is now called General Motors Company." (Lift Stay Mot. at 2).

12. In response to Movant's Lift Stay Motion in these chapter 11 cases, counsel for the Debtors conferred with counsel for General Motors, LLC and General Motors, LLC acknowledged that under the terms of the MSPA it assumed liability for the type of claims asserted in Movant's Appeal because Movant was a former hourly UAW employee. In a letter dated March 24, 2010, attached hereto as Exhibit F, counsel for the Debtors explained to Movant that General Motors, LLC is the proper Appellee in the Appeal. The letter suggested to Movant that she substitute parties in the initial Appeal and withdraw the Lift Stay Motion. In response to the letter, Movant called counsel for the Debtors and informed counsel that she was not prepared to withdraw the Lift Stay Motion.

Movant's Request to File a Claim

13. On March 2, 2010, Movant also filed the instant Claim Motion noting that "Upon and or prior to the closing of the 363 sale of GM assets the corporation took on new identities such as GM, LLC, Vehicle Acquisition Holdings, LLC, Motor Liquidation Co., and New GM" and seeking "relief to file a claim against whichever above listed party is the currently responsible party in such matters." (Claim Mot. at 1-2).

ARGUMENT

I. MOVANT HAS FAILED TO DEMONSTRATE CAUSE FOR RELIEF FROM THE STAY

14. The Lift Stay Motion should be denied because Movant cannot satisfy her burden of establishing cause to lift the automatic stay. Section 362(a) of the Bankruptcy Code provides in pertinent part that the filing of a bankruptcy petition:

> operates as a stay, applicable to all entities, of –
>
> > (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .

11 U.S.C. § 362(a). "The automatic stay provision of the Bankruptcy Code … has been described as 'one of the fundamental debtor protections provided by the bankruptcy laws.'" *Midlantic Nat'l Bank v. N.J. Dep't of Envt'l Protection*, 474 U.S. 494, 503 (1986)) (quoting S. Rep. No. 95-989 at 54 (1978); H.R. Rep. No. 95-595 at 340 (1977)). The automatic stay provides the debtor with a "breathing spell" after the commencement of a chapter 11 case, shielding the debtor from creditor harassment at a time when the debtor's personnel should be focusing on the administration of the chapter 11 case. *Fidelity Mortgage Investors v. Camelia Builders, Inc. (In re Fidelity Mortgage Investors)*, 550 F.2d 47, 53 (2d Cir. 1976) (Bankruptcy Act case), *cert. denied*, 429 U.S. 1093 (1977). Further, it "prevents creditors from reaching the assets of the debtor's estate piecemeal and preserves the debtor's estate so that all creditors and their claims can

be assembled in the bankruptcy court for a single organized proceeding." *AP Indus., Inc. v. SN Phelps & Co. (In re AP Indus., Inc.),* 117 B.R. 789, 798 (Bankr. S.D.N.Y. 1990).

15. Section 362(d) of the Bankruptcy Code provides that a party may be entitled to relief from the automatic stay under certain circumstances. 11 U.S.C. § 362(d); *In re Eclair Bakery Ltd.*, 255 B.R. 121, 132 (Bankr. S.D.N.Y. 2000). Specifically, relief from the stay will be granted only where the party seeking relief demonstrates "cause":

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –
>
> > (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

11 U.S.C. § 362(d)(1).[1] Section 362(d)(1) does not define "cause." However, courts in this Circuit have determined that in examining whether cause exists they "must consider the particular circumstances of the case and ascertain what is just to the claimants, the debtor, and the estate." *City Ins. Co. v. Mego Int'l, Inc. (In re Mego Int'l, Inc.),* 28 B.R. 324, 326 (Bankr. S.D.N.Y. 1983).

A. Cause Does Not Exist to Lift the Stay Because the Debtors did not Retain Liability for Movant's Appeal and Relief From the Stay is not Necessary to Proceed as to the Proper Appellee

16. The stay should not be lifted to allow Movant to proceed with the Appeal as to the Debtors because the Debtors did not retain liability for the causes of action at

[1] Sections 362(d)(2)-(4) of the Bankruptcy Code provide grounds for relief from the stay that are not applicable to the Lift Stay Motion.

issue in the Appeal. As noted above, under the terms of the MSPA, General Motors, LLC assumed liability for employment discrimination claims brought by any employee that is or was covered by the UAW Collective Bargaining Agreement. Movant was an employee whose terms of employment were governed by the UAW Collective Bargaining Agreement. (Ex. A, 5). Accordingly, General Motors, LLC assumed liability for the Appeal. Counsel for General Motors, LLC has acknowledged this in communications with the Debtors' counsel and General Motors, LLC authorized MLC's counsel in the Appeal to indicate the same in a filing with the Appeals Court. (Ex. D).

17. General Motors, LLC is not a debtor in these chapter 11 cases and is not protected by the automatic stay. The Appeal may proceed as to General Motors, LLC if it is substituted as the Appellee in place of MLC. The Debtors would not object to such substitution, which would obviate the need for any stay relief as to the Debtors. Accordingly, the Lift Stay Motion should be denied.

B. <u>The Sonnax Factors do Not Support Lifting the Automatic Stay</u>

18. The seminal decision in this Circuit on whether cause exists to lift the automatic stay is *Sonnax Industries, Inc. v. Tri Component Products Corp.* (*In re Sonnax Industries, Inc.)*, 907 F.2d 1280, 1286 (2d Cir. 1990); *see Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 143 (2d Cir. 1999) (vacating District Court order granting stay relief where Bankruptcy Court had not applied *Sonnax* factors, made only sparse factual findings, and ultimately did not provide appellate court "with sufficient information to determine what facts and circumstances specific to the present case the court believed made relief from the automatic stay appropriate."). In *Sonnax*, the Second Circuit outlined twelve factors to be considered when deciding whether to lift the automatic stay:

(1) whether relief would result in a partial or complete resolution of the issues;

(2) lack of any connection with or interference with the bankruptcy case;

(3) whether the other proceeding involves the debtor as a fiduciary;

(4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;

(5) whether the debtor's insurer has assumed full responsibility for defending it;

(6) whether the action primarily involves third parties;

(7) whether litigation in another forum would prejudice the interests of other creditors;

(8) whether the judgment claim arising from the other action is subject to equitable subordination;

(9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;

(10) the interests of judicial economy and the expeditious and economical resolution of litigation;

(11) whether the parties are ready for trial in the other proceeding; and

(12) impact of the stay on the parties and the balance of harms.

Sonnax, 907 F.2d at 1286. Only those factors relevant to a particular case need be considered, and the court need not assign them equal weight. *In re Touloumis*, 170 B.R. 825, 828 (Bankr. S.D.N.Y. 1994). The moving party bears the initial burden to demonstrate that cause exists for lifting the stay under the *Sonnax* factors. *Sonnax*, 907 F.2d at 1285. If the movant fails to make an initial showing of cause, the court should deny relief without requiring any showing from the debtor that it is entitled to continued

protection. *Id.* Further, the cause demonstrated must be "good cause." *Morgan Guar. Trust Co. v. Hellenic Lines, Ltd.*, 38 B.R. 987, 998 (S.D.N.Y. 1984).

19. Movant fails to meet her burden of establishing good cause for lifting the automatic stay under the *Sonnax* analysis as she does not reference the *Sonnax* factors or provide any cause for lifting the stay whatsoever, she merely requests that the stay be lifted to allow the Appeal to proceed. (Lift Stay Mot. at 2). Because Movant cannot meet her burden of establishing cause to lift the stay, the burden does not shift to the Debtors to affirmatively demonstrate that relief from the stay is inappropriate. *Sonnax*, 907 F.2d at 1285. Nevertheless, the *Sonnax* factors relevant to this case plainly weigh against lifting the automatic stay to allow the Appeal to proceed at this juncture.

20. The first factor does not support relief from the stay because allowing the Appeal to proceed as to the Debtors would not result in complete resolution of the issues because the Debtors are not the proper Appellees in the Appeal. Moreover, even if the Appeal were allowed to proceed as to the Debtors and Movant prevailed in her appeal, at best the matter would be remanded to the District of Kansas to be heard on the merits. Even if a judgment were ultimately entered for Movant, such a judgment would be unenforceable because Movant did not file a proof of claim in these chapter 11 cases and, as discussed further below, Movant's Claim Motion should be denied. Pursuant to the Bar Date Order, the Debtors are thus discharged from any and all indebtedness or liability with respect to Movant's claims.

21. The second and seventh *Sonnax* factors weigh against lifting the automatic stay as well because allowing the Appeal to proceed would interfere with these chapter 11 cases and prejudice the interests of other creditors. As this Court noted

previously in denying a similar lift stay motion, requiring the Debtors to litigate the Appeal at this juncture in these chapter 11 cases would not only deplete estate resources, thereby prejudicing other creditors, but would also expose the Debtors to having to defend countless other lift stay motions. This would impose a heavy burden on the Debtors' valuable time and scarce resources when the Debtors' focus should be on, among other things, determining how to dispose of their remaining assets in an orderly and value-maximizing manner and proceeding with an organized chapter 11 claims resolution process.

22. The tenth *Sonnax* factor does not support relief from the stay because the interests of judicial economy and the economical resolution of litigation would best be served if the Appeal were to proceed as to General Motors, LLC, the proper Appellee. Likewise, the twelfth *Sonnax* factor does not support lifting the stay because the burden imposed on the Debtors in terms of the time, financial resources, and attention necessary to defend itself in the Appeal far outweighs any potential gain to Movant in proceeding with the Appeal against the Debtors given that the Debtors did not assume liability for the claims underlying the appeal and even if any judgment were entered against the Debtors, it would be unenforceable for failure to timely file a proof of claim. Thus, Movant is not prejudiced in any material respect by maintenance of the automatic stay as to the Debtors and the Court should deny her Lift Stay Motion.

II. MOVANT'S REQUEST FOR LEAVE TO FILE A CLAIM IS UNNECESSARY BECAUSE THE PARTY IN INTEREST IS NOT A DEBTOR

23. Movant's Claim Motion does not state the nature, basis, or any specifics whatsoever, about the claim Movant would like to file. It merely requests "relief to file

claim against" "GM, LLC, Vehicle Acquisition Holdings, LLC, Motors Liquidation Co. and New GM" or whichever of the foregoing "is the currently responsible party." (Claim Mot. at 1-2.) To the extent that Movant seeks to file a proof of claim in these chapter 11 cases regarding the employment discrimination claims underlying her Appeal, as noted above, liability for such claims was assumed by General Motors, LLC. Because General Motors, LLC is not a debtor in these chapter 11 cases, it is not necessary for Movant to file a proof of claim to pursue her employment discrimination claims as to General Motors, LLC.

24. To the extent Movant seeks to file a proof of claim for a liability retained by MLC, such a request should be denied for failure to comply with the Bar Date Order. A proof of claim bar date "does not function merely as a procedural gauntlet, but as an integral part of the reorganization process." *First Fidelity Bank, N.A. v. Hooker Invs. Inc. (In re Hooker Invs., Inc.*) 937 F.2d 833, 840 (2d Cir. 1991). Requirements for timely filing are intended to promote finality in bankruptcy proceedings. *Hoos & Co. v. Dynamics Corp. of Am.*, 570 F.2d 433, 439 (2d Cir. 1978). The bar date is strictly enforced. *Id.* "If individual creditors were permitted to postpone indefinitely the effect of a bar order . . . the institutional means of ensuring the sound administration of the bankruptcy estate would be undermined." *In re Hooker Invs. Inc.*, 937 F.2d at 840.

25. After passage of the bar date, a claimant cannot participate in the reorganization unless he establishes sufficient grounds for the failure to file a proof of claim. *In re Best Prods. Co., Inc.*, 140 B.R. 353, 357 (Bankr. S.D.N.Y. 1992). To file a proof of claim after the bar date, a movant bears the burden of establishing excusable

neglect. *In re Enron*, 419 F.3d 115 (2d Cir. 2005). Courts weigh four factors in determining whether to allow a late-filed claim:

1. the danger of prejudice to the debtor;
2. the length of the delay and its potential impact on judicial proceedings;
3. the reason for the delay, including whether it was within the reasonable control of the movant; and
4. whether the movant acted in good faith.

Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 385 (1993). The most important factor is the third, the reason for the delay in filing a proof of claim. *In re Enron*, 419 F.3d at 122-123. "Inadvertence, ignorance of the rules, or mistake construing the rules do not usually constitute 'excusable' neglect." *Pioneer*, 507 U.S. at 392. Likewise, oversight does not amount to excusable neglect. *In re Dana Corp.*, 2008 Bankr. LEXIS 2241, at *12 (Bankr. S.D.N.Y. July 23, 2008) (disallowing late proof of claim where Movant and his attorney had actual notice of the bankruptcy despite their arguments that they had not received a proof of claim and where movant and his counsel had participated in the bankruptcy case by filing a lift stay motion which demonstrated knowledge of bankruptcy law). In *Dana Corp.*, the Bankruptcy Court further noted that "permitting Movant to pursue his claim at this late juncture would be unfair to those claimants and the many thousands of claimants who respected the Bar Date and would potentially open a floodgate of other late claimants seeking the same relief." *Id.* at **16-17; *see also In re Enron Corp.*, 419 F.3d at 130 (recognizing the potential of a "flood of similar claims" as a factor in analyzing prejudice to the debtor in excusable neglect cases).

26. Movant's Claim Motion does not provide any justification for her failure to file a proof claim on or before the bar date. Movant was aware of the proceedings in these chapter 11 cases as demonstrated by the letter she filed with this Court on June 19, 2009. Further, on June 25, 2009, the Debtors mailed and e-mailed Movant a letter providing the contact information for the Unsecured Creditors Committee should Movant have any questions regarding filing a proof of claim. The claims agent in these chapter 11 cases mailed the bar date notice and proof of claim package to Movant at three addresses prior to expiration of the bar date. Under these circumstance, to allow Movant to file a late proof of claim against the Debtors in an unknown amount and for an unknown liability would prejudice the tens of thousands of other creditors who timely filed their proofs of claim. Nearly four months have passed since expiration of the bar date and the Debtors are working diligently to resolve the tens of thousands of claims filed in these cases. To allow Movant to file a late proof of claim would expose the Debtors to a flood of similar motions seeking leave to file late claims, which would expend the time, attention, and resources of the Debtors in responding to the motions and the late filed claims. Finally, given the likelihood that any claims that could be asserted by Movant would be properly asserted against General Motors, LLC, allowing a claim to be filed that would necessitation an objection from the Debtors would cause an unnecessary expenditure of the Debtors' limited resources. Accordingly, Movant's Claim Motion should be denied.

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court deny both the Motions and the relief requested therein.

Dated: March 26, 2010
New York, New York

/s / Joseph H. Smolinsky
Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors and
Debtors in Possession

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Lisa Patrice Gross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 06-2452 JAR DJW
	)	
General Motors Corporation,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OF DEFENDANT GENERAL MOTORS CORPORATION IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

LATHROP & GAGE L.C.

/s/ Heather R. Gill
Heather R. Gill Kansas No. 18847
David C. Vogel Kansas No. 18129
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri 64108-2684
Telephone: (816) 292-2000
Facsimile: (816) 292-2001

Attorney for Defendant General Motors Corporation

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Defendant General Motors Corporation ("GM") submits the following Memorandum in Support of its Motion for Summary Judgment.

INTRODUCTION

Plaintiff has been employed by GM for one year and nine months, when she went on a paid medical leave of absence for treatment of her bipolar disorder. Six weeks later, plaintiff's personal physician and an independent medical examiner certified plaintiff to return to work without restrictions, but plaintiff failed to return to work upon the expiration of her leave. As a result, plaintiff was terminated pursuant to the collective bargaining agreement governing her employment. Neither plaintiff's bipolar disorder nor her complaints about her workplace environment had anything to do with GM's decision to terminate plaintiff for her job abandonment. Likewise without merit are plaintiff's allegations that she was subjected to a hostile work environment during her employment. Plaintiff's lawsuit is based on nothing more than her perceptions of unfair treatment, which does not establish a submissible case. Accordingly, GM respectfully requests that it be granted summary judgment with regard to all of plaintiff's claims asserted in this matter.

STATEMENT OF UNCONTROVERTED FACTS

GM submits the following statement of uncontroverted facts pursuant to Local Rule 56.1.

Plaintiff's Employment With GM

1. Plaintiff Lisa Patrice Gross, an African-American female, was employed by GM from February 9, 2004 to January 13, 2006. [Deposition of Lisa Patrice Gross, pp. 41-42, 139, Ex. 1; Amended Complaint, ¶ 13].[1] Plaintiff was a member of the United Auto Workers union during her employment. [Declaration of Karen DeOrnellas, ¶ 2, Ex. 2].

[1] Numerous facts in this Statement are taken from the deposition of plaintiff Lisa Patrice Gross, which is attached hereto as Exhibit 1, and are therefore offered as undisputed for purposes of this Motion only.

2. Plaintiff was on paid medical leave from April 20, 2005 to June 21, 2005 for stress, depression and anxiety. Plaintiff then went on paid medical leave again from August 9, 2005 to September 13, 2005. [Gross Depo. pp. 135-38].

3. Between November 1 and 7, 2005, plaintiff was diagnosed with bipolar disorder. [Gross Depo. p.143].

4. Plaintiff went on her third paid medical leave of absence on November 13 or 14, 2005 and did not thereafter return to work. [Gross Depo. pp. 77, 135-38, 143-44].

5. In accordance with GM's Disability Management guidelines, plaintiff was administered an independent medical examination on December 7, 2005, by Dr. Fernando Egea. Dr. Egea diagnosed plaintiff with Major Depressive Disorder and assessed global functioning at 70%, which "describes an individual with some mild symptoms or some difficulty in social, occupational, or school functioning, but generally functioning pretty well." Dr. Egea recommended plaintiff return to work on January 9, 2006. [Ex. 3; DeOrnellas Decl., ¶ 4].

6. Plaintiff's leave of absence was thus set to expire on January 9, 2006. [DeOrnellas Decl., ¶ 4; Gross Depo. p. 156]. The January 9, 2006 expiration of plaintiff's leave of absence is reflected on the disability benefits checks plaintiff received from GM. [Ex. 4 (Gross Depo. Ex. 9); Gross Depo. p. 187].

7. Plaintiff failed to returned to work within three days of the expiration of her leave. Plaintiff's seniority was broken pursuant to paragraph 111(b) of the collective bargaining agreement and plaintiff was thus discharged from her employment with GM effective January 13, 2006. [DeOrnellas Decl., ¶ 7; Gross Depo. p. 189].

Facts Demonstrating Plaintiff Was Not Sexually Harassed or Subjected to a Hostile Work Environment

8. Throughout her employment, plaintiff complains that various hourly coworkers and management employees would ask her if she dated. Plaintiff believes her coworkers asked these questions to "see if I'm easy, if I'm an easy woman." Plaintiff would tell her coworkers that she did not date and was a Christian. [Gross Depo. pp. 80-84].

9. The only supervisor whom plaintiff could specifically identify that asked her these type of questions was Michael Carter, a Caucasian male, who was married to an African-American female. When plaintiff told Carter she did not date, he responded, "I might treat you good." Carter also allegedly let plaintiff know he "took good care of his wife and that his wife was a happy women," which Carter believed "kind of turned on" "a lot of women." Plaintiff also claims Carter commented on her physique, including her breasts and butt. Carter would also pant and pat his heart, as if he were in love with plaintiff. Carter also asked plaintiff "questions about sex." [Gross Depo. pp. 84-85, 89, 213].

10. Plaintiff "stood her ground" with Carter and he "eventually" stopped making these comments. Plaintiff and Carter then became "good friends." [Gross Depo. pp. 85, 89].

11. Plaintiff claims that her coworkers circulated a rumor that she was having an affair with Carter. [Amended Complaint, ¶ 18].

12. On October 2 or 3, 2005, Michael Carter's wife, Flossie Carter, called plaintiff at work and accused her of sleeping with Michael Carter. Flossie Carter never physically threatened plaintiff during his conversation. Plaintiff hung up on her. [Gross Depo. pp. 94-95, 98-99, 116-17; Amended Complaint, ¶ 19].

13. Plaintiff reported the incident to Phil Johnson, GM's labor relations representative. Johnson agreed to speak with Carter. Later that day, Johnson called plaintiff

back to the labor relations department to meet with Carter. Carter told plaintiff he was going through a nasty divorce and apologized to plaintiff. Carter told plaintiff he would handle the situation. [Gross Depo. pp. 100-01; Amended Complaint, ¶ 20].

14. Later that day, plaintiff approached Carter when she saw him leaving and apologized. Plaintiff told Carter she was not trying to get him in any trouble but was concerned and felt it was the "best thing" for her to do. Carter told plaintiff she had done nothing wrong and inquired if she was okay. Plaintiff responded she was and Carter hugged her gently on her shoulder. [Gross Depo. p. 101].

15. Plaintiff did not receive any more phone calls from Flossie Carter after reporting the incident to GM's labor relations department. [Gross Depo. p. 102]. Even though she received no further contact from Flossie Carter and admits that Flossie Carter never physically threatened her, plaintiff believes GM should have offered her "security." [*Id.* pp. 114, 116-17].

16. Michael Carter died on November 1 or 2, 2005. [Gross Depo. p. 104].

17. On November 11, 2005, plaintiff discovered a note on a car on the factory line that read, "Daddy, can I have a pony for my b-day? Love me. Lisa, where is your daddy?" Plaintiff discovered an additional ten to twelve similar notes in the next hour. [Gross Depo. pp. 103-05]. None of the other notes bore plaintiff's name, but one of the notes did bear the name "Karl." [*Id.* pp. 110-11].

18. Even though plaintiff had never heard these words used at the plant, she believes the phrase, "who is your daddy," was a sexual innuendo. [Gross Depo. pp. 118-19].

19. Plaintiff complained to her supervisor, Julie Mullins, about the notes. Mullins allegedly responded that the notes were "no big deal" and "just a practical joke." Plaintiff then

asked to go to GM's labor relations department and Mullins refused. Plaintiff ignored Mullins' directive and left the line to go to the labor relations department. [Gross Depo. pp. 105-07].

20. Mullins denied plaintiff's request because GM's labor relations department was closed at the time of plaintiff's request, although plaintiff claims she was not aware of this fact at the time of her request. [Gross Depo. p. 112; DeOrnellas Decl., ¶ 9].

21. When Gross returned from the labor relations department, plaintiff claims Mullins put plaintiff on notice that she was going to administer disciplinary action to her for leaving the line without permission. [Gross Depo. pp. 107-09]. Plaintiff admits that leaving the line after her supervisor had denied her permission to do so, could be deemed insubordination. [*Id.* p. 123].

22. While plaintiff believes she was disciplined the following week, GM's records show she was not disciplined as a result of this event. [Gross Depo. pp. 107-09; Amended Complaint, ¶ 28; DeOrnellas Decl.¶ 9].

23. During plaintiff's next scheduled shift, plaintiff requested to go to the labor relations department. The department was open that day and plaintiff was allowed to go. [Gross Depo. pp. 124-25].

24. GM's labor relations department investigated the incident involving the notes and informed plaintiff that its investigation revealed that the notes were written by an employee named Wendy for another employee named Karl. Even though Karl's name appeared on one of the notes and plaintiff had witnessed Wendy came into work with "a pony on a stick" the week after the notes were written, plaintiff disagrees with the conclusion reached by GM's labor relations department. [Gross Depo. pp. 110-11, 118]. Plaintiff admits, however, that after November 11, she did not receive any similar notes. [*Id.* pp. 111, 125].

Facts Demonstrating GM Adequately Responded to Plaintiff's Complaints

25. GM has established corporate policies that detail expected behavior for employees, including specific provisions prohibiting discrimination and harassment. GM's policies prohibiting discrimination contain a complaint and reporting provision. [Ex. 5 (Gross Depo. Ex. 2)].

26. The collective bargaining agreement between GM and the United Auto Workers, of which plaintiff was a member, reiterates GM's policies against discrimination and allows union employees to raise complaints of discrimination by filing a grievance. [DeOrnellas Decl., ¶ 11].

27. Plaintiff received training on GM's anti-discrimination and sexual harassment policies and reporting procedures in her first two weeks of employment with GM. Plaintiff was also shown where these policies were posted in the plant. [Gross Depo. pp. 70-73, 140-41; Ex. 5]. Plaintiff was aware she could make complaints to discrimination to GM's human resources department or to her union. [Gross Depo. p. 141].

28. Plaintiff never complained to GM's human resources department or any GM supervisor about her coworkers' questions or Carter's comments. [Gross Depo. pp. 84, 86; *see also* Statement of Fact ("SOF") 8-9].

29. When plaintiff complained about Flossie Carter's phone call to her (*see* SOF 12-13), GM's labor relations department responded to plaintiff's complaint that same day by speaking with Michael Carter, who apologized for his wife's behavior and agreed to assure the incident was not repeated. Plaintiff did not receive any more phone calls from Flossie Carter after reporting the incident to GM's labor relations department. [Gross Depo. pp. 100-03].

30. In the weeks between Flossie Carter's phone call to plaintiff and Michael Carter's death, plaintiff also believes Carter was trying to get any rumors that she and Carter were having an affair stopped [Gross Depo. p. 90].

31. When plaintiff complained to GM's labor relations department about the notes she discovered (*see* SOF 23-24), GM's labor relations department investigated the incident and informed plaintiff that its investigation had revealed that the notes were written by and directed to other employees. [Gross Depo. pp. 110-11, 118]. Plaintiff did not receive any similar notes after GM's investigation concluded. [*Id.* pp. 111, 125].

32. On November 14, 2005, while plaintiff was on leave, she mailed a videotape to Kathleen Barclay, in GM's Human Resources department in Detroit, Michigan. Plaintiff claims that she addressed the rumors prior to Flossie Carter's phone call and her concerns for her safety. Plaintiff also claims she mentioned her diagnosis with a psychiatric disorder and stated she would be requesting a reasonable accommodation for it. [Gross Depo. pp. 141-43].

33. Although plaintiff was on leave, Pamela Goodwin, GM's labor relations representative, and Tom Mestdagh from GM's security department, met with plaintiff off-site at a hotel on January 4, 2006, to address her concerns. [Gross Depo. pp. 167-68]. During this meeting, plaintiff complained of sexual innuendoes by Carter (now deceased), but admitted she never reported any harassment by Carter. Plaintiff also complained again about the notes she had discovered, and Goodwin reiterated that the notes were directed to another employee and were a practical joke being played on someone else. Because Carter was deceased and plaintiff's complaints about the notes had already been investigated, no further action was taken by GM. [Declaration of Pamela Goodwin, ¶ 3, Ex. 6].

Facts Demonstrating GM Did Not Retaliate Against Plaintiff

34. Plaintiff's Amended Complaint alleges GM retaliated against her by disciplining her for leaving the line on November 11, 2005. [Amended Complaint, ¶¶ 40-41; *see also* SOF 22]. However, in her deposition, plaintiff did not identify this alleged event as the basis of her retaliation claim. [Gross Depo. pp. 204-06]. Regardless, plaintiff was not disciplined. [DeOrnellas Decl. ¶ 9].

35. Instead, plaintiff testified that she believes Phil Johnson, GM's Labor Relations Representative, retaliated against her during an incident which occurred on December 15, 2005, while plaintiff was on sick leave. On that date, plaintiff went to the plant to review her medical file. In accordance with GM policy, GM's security department refused to allow plaintiff to enter the plant because she was on sick leave. Plaintiff alleges Johnson then appeared, screamed at her and also refused her access because she was on sick leave.[2] Plaintiff felt like it was "a strange situation" and called the police. [Gross Depo. pp. 111-13, 127-28, 131; DeOrnellas Decl. ¶ 10].

36. Interestingly, plaintiff admits that two weeks before she attempted to access GM's facility, she told her physician she was having homicidal thoughts toward her coworkers. [Gross Depo. p. 218].

37. Plaintiff also believes "most of the people in the human resources department" retaliated against her because they were all in "cahoots" in "making sure that I didn't come back to work." [Gross Depo. p. 205]. Plaintiff admits, however, that the only reason she has ever been given for her discharge is that she failed to return to work after her leave of absence expired. [*Id.* p. 189].

[2] Johnson denies yelling or screaming at plaintiff.

Facts Demonstrating Plaintiff is Not a Qualified Individual With a Disability

38. Plaintiff believes she is disabled due to her bipolar disorder. Plaintiff claims her bipolar disorder "limits certain activities that can affect me, the way I function, how I sleep, it could even limit how I work, how I care for myself, my concentration." [Gross Depo. p. 143-44].[3]

39. Plaintiff lives with her five-year old son. Plaintiff is able to care for her son's daily needs, including cooking for him, feeding him and taking him to day care, school, and wherever else he needs to go. Plaintiff can also drive, shop for groceries and clothing, calculate correct amounts of money and bathe and clean herself. Plaintiff does not need a caregiver to assist her in her daily needs. [Gross Depo. pp. 144-47].

40. Plaintiff is currently employed as a taxi-cab driver. [Gross Depo. pp. 191-92].

41. Plaintiff's doctors have told her condition is controllable with medication, but plaintiff refuses to take her medication. [Gross Depo. pp. 147-48].

Facts Demonstrating GM Met its Duty of Accommodation to Plaintiff

42. Plaintiff never made a request for an accommodation prior to taking disability leave for her bipolar disorder. [DeOrnellas Decl. ¶ 3].

43. At her January 4, 2006 meeting with Pamela Goodwin (*see* SOF 33), plaintiff asked Goodwin if she could work day shifts. Plaintiff believes she could "balance out" her bipolar condition better if she had worked on the first shift. Plaintiff explains that she needs eight hours of sleep per night and was unable to get that sleep while working the second shift,

[3] While plaintiff's Amended Complaint also claims plaintiff is disabled due to depression and anxiety, Amended Complaint, ¶ 46, plaintiff admitted in her deposition that her disability claim was based solely on her bipolar disorder. [Gross Depo. p. 143]. In any event, however, neither depression nor anxiety constitute a disability under the ADA. *See, e.g., Kourianos v. Smith's Food & Drug Ctrs., Inc.*, 65 Fed. Appx. 238, 240 (10th Cir. 2003) (depression and anxiety did not render employee disabled); *Steele v. Thiokol Corp.*, 241 F.3d 1248, 1254 (10th Cir. 2001) (depression and obsessive compulsive order did not render employee disabled).

because she did not get to sleep until 2 to 4 a.m. and her son would then get up at 7 a.m. Plaintiff could not sleep after her son woke up because she was worried about him. [Gross Depo. pp. 149-52].

44. Goodwin informed plaintiff that GM could not accommodate her request to work the day shift because there was no opening and plaintiff did not have sufficient seniority under the terms of the collective bargaining agreement. [Gross Depo. pp. 168-69].

45. In early January 2006, GM's plant medical director, Dr. Donald Knepper, received a letter from plaintiff dated December 29, 2005 and requesting reasonable accommodations. Plaintiff's letter attached a December 22, 2005 letter from Dr. Everson indicating possible accommodations. [Ex. 7 (Gross Depo. Ex. 5); DeOrnellas Decl., ¶ 5]. Dr. Everson's note copied the text of a letter plaintiff had provided to him. [Ex. 8 (Gross Depo. Ex. 7); Gross Depo. pp. 173-74].

46. In response to plaintiff's letter, DeOrnellas contacted plaintiff to schedule a meeting between DeOrnellas and plaintiff for them to discuss reasonable accommodations for plaintiff. The meeting was set for January 20, 2006. [Gross Depo. pp. 175-76; DeOrnellas Decl., ¶ 6].

47. In preparing for the meeting, DeOrnellas learned that plaintiff's seniority had been broken effective January 13, 2006. Because plaintiff was thus not returning to her employment with GM, DeOrnellas called plaintiff and cancelled their meeting. [Gross Depo. p. 176; DeOrnellas Decl. ¶ 7],

48. Plaintiff thereafter brought a note from Dr. Everson to DeOrnellas in which Dr. Everson, agreed to extend plaintiff's leave of absence to January 22, 2006. [Gross Depo. 156, DeOrnellas Decl., ¶ 8]. GM had never received this note prior to January 13, 2006, and thus

contacted Dr. Everson's office for verification. In response, Dr. Everson wrote GM on January 24, 2006, and confirmed his decision to no longer validate plaintiff's disability leave effective January 1, 2006. [DeOrnellas Decl., ¶ 8; Ex. 9 (Gross Depo. Ex. 8)].

49. Plaintiff admits that on December 22, 2005, Dr. Everson told plaintiff he was discontinuing his treatment of plaintiff because she refused to take her medication. [Gross Depo. p. 148, 156-57, 162-63].

50. Sedgwick Claims Management Services, Inc. ("Sedgwick") administers requests for medical leaves of absence for employees of GM. On January 4, 2006, Charlene Cantu, a claims examiner at Segdwick, also contacted Dr. Everson to inquire about plaintiff's treatment plan and return-to-work prognosis. [Declaration of Charlene Cantu, ¶ 2, Ex. 10].

51. On January 5, 2006, Dr. Everson told Cantu that he had discharged plaintiff from his care weeks ago because she was not following his medical advice, had not returned to work per his recommendation and had not taken her prescribed medication correctly. [Cantu Decl. ¶ 3].

52. On January 9, 2006, Dr. Everson's office told Cantu that plaintiff was discharged on December 29, 2005 and told to return to work on January 1, 2006. Dr. Everson discharged plaintiff because Dr. Everson believed plaintiff was non-compliant with his treatment and care and to the best of his knowledge plaintiff was just looking for a way to stay off work with pay. [Cantu Decl. ¶ 5].

ARGUMENT

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). As a prerequisite to summary judgment, a moving party must

demonstrate "an absence of evidence to support the non-moving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the moving party has properly supported its motion for summary judgment, the nonmoving party must "do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986). The nonmoving party may not rest on mere allegations or denials of his pleading, but must "come forward with 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 587 (quoting Fed. R. Civ. P. 56(e) and adding emphasis). See also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). The inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co.* 475 U.S. at 587 (citations omitted). However, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial'" and summary judgment is, therefore proper. *Id.* (citation omitted)

Summary judgment is not a "disfavored procedural shortcut," but is rather "an important procedure 'designed to secure the just, speedy and inexpensive determination of every action.'" *Temple v. Auto Banc*, 76 F. Supp. 2d 1124, 1128 (D. Kan. 1999) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). Under these standards, plaintiff's claims fail and GM is entitled to judgment as a matter of law.

I. GM is Entitled to Summary Judgment on Plaintiff's Hostile Work Environment/Hostile Work Environment Claim

A. Plaintiff Was Not Subjected to a Hostile Work Environment

To establish the existence of a hostile work environment actionable under Title VII, plaintiff must show (1) that she was discriminated against because of her sex, and (2) that the discrimination was sufficiently severe or pervasive such that it altered the terms and conditions of her employment and created an abusive work environment. *Medina v. Income Support Div.*,

413 F.3d 1131, 1134 (10th Cir. 2005). Ordinary tribulations of the workplace, including sporadic use of abusive language, gender-related jokes and occasional teasing will not amount to discriminatory changes in the terms and conditions of employment. *Campbell v. Merideth Corp.*, 206 F. Supp. 2d 1087, 1101 (D. Kan. 2003).

The events identified by plaintiff are insufficient to show the existence of a hostile work environment. The rumors that plaintiff, a female, was having an affair with Carter, a male, and the notes between plaintiff's coworkers Wendy and Karl are not actionable because they were not based on plaintiff's gender. [SOF 11, 17, 24]. *See Duncan v. Manager*, 397 F.3d 1300, 1312, 1314 (10th Cir. 2005) (holding distribution of sexually explicit article to both female and male coworkers and rumors female plaintiff had relationships with male officers could not be used to support hostile work environment claim because actions were not based on plaintiff's gender). Moreover, the notes left by Wendy for Karl did not contain any sexually explicit language. The phrase "who's your daddy" is far less offensive than other language courts have found to be non-actionable. [SOF 17]. *See Oliver v. Peter Kiewit & Sons*, 106 Fed. Appx. 672, 674 (10th Cir 2004) (graphic jokes and offensive language did not create hostile work environment). Likewise, plaintiff's coworkers' inquiries as to whether she dated is not offensive and, at most, represents non-actionable teasing of plaintiff. [SOF 8]. *See Campbell*, 260 F. Supp. 2d at 1103 (graffiti "constituted simple teasing" and was not actionable).

Furthermore, all the events identified by plaintiff are too isolated to show plaintiff's workplace was permeated with discriminatory conduct. The notes and Flossie Carter's call to plaintiff were one-time incidents. [SOF 12, 15, 17, 24]. *See Carrasco v. Boeing Co.*, 190 Fed. Appx. 650, 652 (10th Cir. 2006) (four harassing statements in one-year period held insufficient). In addition, GM cannot be held liable for Flossie Carter's phone call to plaintiff because Ms.

Carter was not employed by GM. *Holmes v. Utah Dept. of Workforce Servs.*, 483 F.3d 1057, 1068 (10th Cir. 2007) (employers have no duty to protect employees against conduct of non-employees).

Similarly, Carter's flirtation with plaintiff ended long before plaintiff was terminated. In fact, plaintiff considered Carter a "good friend" by at least October 2005. [SOF 10]. *See Carrasco v. Boeing Co.*, 190 Fed. Appx. 650, 652 (10th Cir. 2006) (four harassing statements in one-year period, including supervisor asking if he could measure plaintiff's shorts from inside of her thigh and see plaintiff's thong underwear, inquiry whether plaintiff tanned naked and compliment on plaintiff's hair, were not severe or pervasive). Moreover, Carter only touched plaintiff once, when he hugged her shoulder, and this act, by plaintiff's own testimony, was motivated by their friendship and plaintiff did not find it offensive. [SOF 14]. As a matter of law, these events are insufficient to give rise to a hostile work environment.

B. GM Adequately Responded to Plaintiff's Complaints

An employer is liable for a sexually hostile work environment only if it fails to take adequate remedial and preventative responses to any actually or constructively known harassment. *Holmes*, 483 F.3d at 1069. If the employer adequately responds to claims of sexual harassment, it may not be held liable under Title VII. *Id.*; *Duncan*, 397 F.3d at 1313.

In *Holmes*, the employee felt harassed by a non-employee's actions and complained. 483 F.3d at 1069. In response, the employer barred the person from their premises. The court held the employer's reasonable and prompt response addressing the conduct protected the employer from liability. *Id.* In *Duncan*, the employer investigated the plaintiff's complaints that a sexually explicit magazine article had been distributed to employees and concluded that the article was insufficient to demonstrate sexual harassment. *Id.* at 1314. The employer also investigated rumors the plaintiff complained had been started that she was having affairs with various

employees. *Id.* at 1313. The employer found both the plaintiff and the instigator of the rumors had acted inappropriately and issued disciplinary action. *Id* The court held the employer's investigations relieved the employer of liability because "Title VII provides no remedy for bad taste," and "[t]here is no requirement that the City muzzle its employees before they make an offensive statement; rather the burden placed on the City is to penalize harassing actions by its employees in a prompt and effective manner. The City met that burden here." *Id.* at 1313-14.

Here, too, GM's prompt remedial responses to plaintiff's complaints protects them GM liability. Plaintiff never complained to GM's human resources department or any GM supervisor about her coworkers questions or Carter's comments. [SOF 28, 33]. *See Atkins v. Southwestern Bell Tel. Co.*, 137 Fed. Appx. 115, 118 (10th Cir. 2005) (employer was not liable for conduct which plaintiff failed to report).

When plaintiff broke her silence and complained, GM promptly and adequately addressed those complaints. *Id.* When plaintiff complained about Flossie Carter's phone call to her, GM's labor relations department responded to plaintiff's complaint that same day by speaking with Michael Carter, who apologized for his wife's behavior and agreed to assure the incident was not repeated. [SOF 13]. Plaintiff did not receive any more phone calls from Flossie Carter after reporting the incident to GM's labor relations department. [SOF 15]. In the weeks between Flossie Carter's phone call to plaintiff and Michael Carter's death, Carter also tried to get any rumors that she and Carter were having an affair stopped [SOF 30].

When plaintiff complained to GM's labor relations department about the notes she discovered, GM's labor relations department investigated the incident and informed plaintiff that its investigation had revealed that the notes were written by and directed to another employee.

[SOF 24]. Plaintiff did not receive any similar notes after GM's investigation concluded. [SOF 24].

When plaintiff mailed a videotape to Barclay, GM met with plaintiff to discuss her complaints, even though plaintiff was on leave. [SOF 32-33]. Because plaintiff's complaints about Carter involved a deceased supervisor and her complaints about the notes had already been investigated, no further action was taken by GM. [SOF 33].

While plaintiff may disagree with the results of GM's investigations, it is neither plaintiff nor this Court's role to "act as a super personnel department that second guesses employers' business judgments." *Antana v. City and County of Denver*, 488 F.3d 860, 865 (10th Cir. 2007). Because GM promptly addressed all of plaintiff's complaints, her hostile work environment claim is barred.

II. GM is Entitled to Summary Judgment on Plaintiff's Retaliation Claim

In order to establish a prima facie case of retaliation, plaintiff must show (1) that she engaged in protected opposition to discrimination, (2) that she was subjected to an adverse action by the employer following the protected activity, and (3) that a causal connection exists between the protected activity and the adverse action. *See, e.g., Archuleta v. Colorado Dep't of Inst.*, 936 F.2d 483, 486 (10th Cir. 1991).

After the plaintiff establishes a prima facie case, the *McDonnell Douglas* burden-shifting approach is utilized to determine whether plaintiff has made out a submissible claim. *See Anderson v. Phillips Petroleum Co.*, 861 F.2d 631, 634 (10th Cir. 1988). Under this approach, "the burden shifts to [the employer] to articulate a legitimate, nondiscriminatory reason for the adverse employment action." *Bullington v. United Airlines, Inc.*, 186 F.3d 1301, 1316 (10th Cir. 1999). "If [the employer] offers a legitimate, nondiscriminatory reason for its actions, the burden reverts to [the plaintiff] to show [the employer's] proffered reason was a pretext for"

retaliation. *Id.* "To establish pretext a plaintiff must show either that 'a [retaliatory] reason more likely motivated the employer or . . . that the employer's proffered explanation is unworthy of credence.'" *Id.* (quoting *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 256 (1981)). "However, the plaintiff's 'mere conjecture that [the] employer's explanation is a pretext for [retaliation] is an insufficient basis for denial of summary judgment.'" *Id.* (quoting *Branson v. Price River Coal Co.*, 853 F.2d 768, 772 (10th Cir. 1988)).

GM concedes that plaintiff's January 4, 2006 complaint to Goodwin that she believed Carter (then deceased for two months) had sexually harassed her constitutes protected activity. [SOF 33]. GM submits, however, the remainder of plaintiff's complaints plaintiff do not constitute protected activity because they did not oppose any practice made illegal by Title VII or any other act prohibiting discrimination in the workplace. Plaintiff complaint about Flossie Carter's call did not include any allegation of sexual harassment against Michael Carter. [SOF 13]. Likewise, when plaintiff complained about the notes she discovered, she made no claim the notes created a hostile work environment. [SOF 23]. Plaintiff may not, therefore, rely on these complaints to support her retaliation claim. *See Anderson v. Academy Sch. Dist. 20*, 122 Fed. Appx. 912, 916 (10th Cir. 2004) ("But a vague reference to discrimination and harassment without any indication that this misconduct was motivated by race (or another category protected by Title VII) does not constitute protected activity and will not support a retaliation claim"); *see also Annett v. University of Kan.*, 216 F. Supp. 2d 1249, 1256 (D. Kan. 2002) (complaints to EEOC that employer had violated conciliation agreement held not protected activity); *Smith v. Board of County Comm'ners of Johnson County, Kan.*, 96 F. Supp. 2d 1177, 1193 (D. Kan. 2000) (general complaints of harassment held not protected activity).

The timing of plaintiff's protected activity is important when considering the alleged adverse actions identified by plaintiff because plaintiff's alleged November 11, 2005 discipline and Johnson's statements to her on December 15, 2005 when she tried to access the plant while on leave occurred before plaintiff ever engaged in any protected activity. [SOF 21, 33, 35]. Obviously, GM could not retaliate against plaintiff for protected activity which she had not yet engaged in.

Plaintiff's ability to rely on the November 11 and December 15, 2005 events is also foreclosed by the fact that neither constitute adverse actions as defined by the law. The Tenth Circuit has adopted a case-by-case approach in defining what constitutes an adverse action for purposes of discrimination or retaliation claims. *Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1178 (10th Cir. 1999). In doing so, however, it is guided by the United States Supreme Court's 1998 statement that a "tangible" employment action "constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998); *see also Kitchen v. Burlington Northern & Santa Fe. R.R.*, 298 F. Supp. 2d 1193, 1204 (D. Kan. 2004) (conduct generally qualifies as an adverse employment action if it "constitutes a significant change in [the plaintiff's] employment status") (citations and internal quotations omitted); *Tran v. Trustees of State Colleges*, 355 F.3d 1263, 1267 (10th Cir. 2004) (noting that *Ellerth* definition of tangible employment action "has often been used to describe what constitutes an adverse employment action for purposes of a Title VII retaliation claim").

Accordingly, although this circuit gives the phrase "adverse action" a liberal interpretation, it does not extend to "a mere inconvenience or an alteration of job

responsibilities." *Heno v. Sprint/United Mgmt. Co.*, 208 F.3d 847, 857 (10th Cir. 2000). Where an employee continues "working in the same job, for the same pay, with the same benefits," she cannot state a claim for an adverse employment action as that term is defined under the law. *Id.*

Under these standards, plaintiff's allegations that she received an oral reprimand from Mullins on November 11, 2005 and was prohibited from entering the plant on December 15, 2005, involve actions which are not legally adverse. *Sanchez v. Denver Public Schs.*, 164 F.3d 527, 533 (10th Cir. 1998) ("unsubstantiated oral reprimands" do not constitute adverse action); *Amro v. Boeing Co.*, 232 F.3d 790, 795-99 (10th Cir. 2000) (supervisor calling plaintiff a "fucking foreigner," placing his hands around plaintiff's neck, throwing papers at plaintiff and otherwise speaking unpleasantly to plaintiff "not severe or pervasive enough to be an adverse employment action"). In addition, plaintiff may not rely on the oral reprimand she received as she abandoned this claim during her deposition. [SOF 34]. *Chatfield v. Shilling Constr. Co., Inc.*, No. 97-4253-RDR, 1999 WL 459763, at *1 fn.1 (D. Kan. June 24, 1999).

What remains, therefore, to support plaintiff's retaliation claim is her January 4, 2006 complain to Goodwin and her January 13, 2006 termination. [SOF 33, 37]. While close in time, temporal proximity alone is insufficient to allow an inference of a causal connection between two events. *E.E.O.C. v. PVNF, L.L.C.*, 487 F.3d 790, 804 (10th Cir. 2007). Because GM has articulated a legitimate non-discriminatory reason for terminating plaintiff—her failure to return to work upon the expiration of her medical leave—plaintiff must show this reason is pretextual to proceed with her retaliation claim. *Id.* To show pretext, plaintiff must produce evidence of "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally

find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons." *Id.* at 805. Plaintiff cannot meet this burden.[4]

Plaintiff's personal physician certified plaintiff to return to work on January 1, 2006. [SOF 48]. The independent medical examiner, more generous in his assessment, set plaintiff's return to work date as January 9, 2006 and GM adhered to his advice when it set plaintiff's return-to-work date. [SOF 5-6]. When plaintiff failed to return to work within three days of January 9, 2006, she was terminated pursuant to paragraph 111(b) of the collective bargaining agreement. [SOF 7]. Plaintiff admits that her failure to return to work after her leave of absence is the only reason she has ever been given for her termination. [SOF 37]. Any attempt by plaintiff to create pretext by relying on her doctor's note setting a January 22, 2006 return to work date fails because the note was not provided to GM until one week after plaintiff was discharged and plaintiff's doctor had rescinded the note in December 2005 when he discharged plaintiff from his care. [SOF 48-52]. Because plaintiff cannot establish GM's decision to follow medical assessments made by two physicians and to adhere to the terms of the collective bargaining agreement is pretextual, GM is entitled to summary judgment on plaintiff's retaliation claim.

III. GM Did Not Discriminate Against Plaintiff on the Basis of Her Alleged Disability

To establish a prima facie case of disability discrimination under the Act, a plaintiff must show that (1) she is disabled within the meaning of the ADA; (2) she is qualified for her employment position; and (3) the defendant discriminated against her because of her disability.

[4] GM has also articulated nondiscriminatory reasons for the other alleged adverse actions. The alleged oral reprimand originated from plaintiff's failure to obey her supervisor, which plaintiff concedes was insubordination. [SOF 21]. GM refused to allow plaintiff to enter the plant on December 15, 2005, because its policies prohibited her access. [SOF 35]. It is difficult to understand how plaintiff can criticize GM's judgment on this issue when plaintiff was harboring homicidal thoughts toward her coworkers at the time. [SOF 36]. Plaintiff also offers no evidence these reasons are pretextual.

Doebele v. Sprint/United Mgmt. Co., 342 F.3d 1117, 1128 (D. Kan. 2003). Plaintiff cannot meet this burden.

A. Plaintiff is Not Disabled

The ADA's definition of disability includes " (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual." *Id.* at 1128-29. Plaintiff claims she is so disabled due to her bipolar disorder.[5] [SOF 38]. However, to show her bipolar disorder renders her disabled, plaintiff must show that an impairment substantially limits at least one major life activity. *Id.* at 1129. This definition contains three elements. First, the plaintiff must have a recognized impairment; second, the plaintiff must identify one or more appropriate major life activities; and third, the plaintiff must show that the impairment substantially limits one or more of those activities. *Id.* Plaintiff "must articulate with precision the impairment alleged and the major life activity affected by that impairment." *Id.*

A physical or mental impairment is substantially limiting if the affected individual is:

(i) Unable to perform a major life activity that the average person in the general population can perform; or

(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

Id. at 1130. In making this determination, courts consider three factors: " (1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent or long term impact or the expected permanent or long term impact of or resulting from the impairment." *Id.* Courts also take into consideration "any mitigating or corrective

[5] Again, any depression and anxiety that plaintiff may suffer also do not render her disabled. *Kourianos*, 65 Fed. Appx. at 240; *Steele*, 241 F.3d at, 1254.

measures utilized by the individual, such as medications." *Id.* Thus to establish that she was substantially limited in the major life activities she identified, plaintiff is required to show, under the factors set out above, either that she was unable to perform these activities or was significantly restricted in her ability to perform them when compared to the average person in the general population. *Id.*

In *Doebele*, the plaintiff contended she was disabled due to her bipolar condition. *Id.* at 1331. The court rejected this argument, finding that the plaintiff had failed to show she was significantly limited in her ability to communicate or interact with others. *Id.* The court noted plaintiff presented no evidence her communications were characterized by high levels of hostility, social withdrawal or failure to communicate with others. *Id.* Likewise, in *Williams v. Hallmark Cards, Inc.*, 10 Fed. Appx. 790 (10th Cir. 2001), the Court held that an employee with bipolar manic depression was not disabled because he had not shown his condition substantially limited his ability to sleep or urinate. *Id.* at 792. While the employee's medication allegedly caused him difficulty sleeping, there was no evidence that this difficulty was severe, long term, or had a permanent impact. *Id.*

Here, too, plaintiff cannot establish her bipolar condition substantially limits any of her major life activities. Plaintiff first claims her conditions affects her sleep, but it is clear from her deposition testimony that that difficulty arose from her work schedule and lack of child-care, not her bipolar disorder. [SOF 38, 43]. Plaintiff testified her second-shift schedule did not allow her to get eight-hours of sleep her night because she would not go to bed until 2 to 4 am., her five-year old son would rise at 7 a.m. and plaintiff could not sleep after he awoke because she was worried about him. [SOF 43]. These facts have nothing to do with plaintiff's bipolar condition. Moreover, plaintiff offers no evidence her sleep problems were long-term, made it difficult for

her to work or otherwise affected her overall health. *Steele*, 241 F.3d at 1254; *Pack v. Kmart Corp.*, 166 F.3d 1300, 1306 (10th Cir. 1999).

Plaintiff next claims her ability to work and concentrate are affected, but plaintiff had no difficulty performing her job at GM. *Kourianos*, 65 Fed. Appx. at 240 (plaintiff who could perform her job duties satisfactorily was not disabled). Moreover, two physicians certified plaintiff to return to work in early January 2006. [SOF 5, 48]. Plaintiff's personal physician not only felt plaintiff was able to return to work, but also believed plaintiff was just looking for a way to stay off work. [SOF 52]. Nonetheless, even plaintiff admits she was ready to return to work in late January 2006. [SOF 48]. Furthermore, plaintiff currently works full time as a taxi cab driver, a job which obviously requires her to interact on a regular basis with others. [SOF 40]. Plaintiff cannot claim a substantial limitation on her ability to work when such a limitation is not supported by medical or other evidence.

Plaintiff finally claims her ability to care for herself is affected but plaintiff admits she is able to care for her five-year-old son's daily needs, including cooking for him, feeding him and taking him to day care, school, and wherever else he needs to go. Plaintiff can also drive, shop for groceries and clothing, calculate correct amounts of money and bathe and clean herself. Plaintiff does not need a caregiver to assist her in her daily needs. [SOF 39]. Given these facts, plaintiff cannot establish a substantial limitation on her ability to care for herself. *See Kourianos*, 65 Fed. Appx. at 240 (plaintiff who could care for herself and small child was not disabled).

In addition, plaintiff's physicians have told her that her condition is controllable with medication, but plaintiff refuses to take the medication. [SOF 41]. Plaintiff's personal physician even discharged plaintiff from his care based on this refusal. [SOF 51-52]. The United States Supreme Court has made clear that whether a person has a disability within the meaning of the

ADA must be made with reference to corrective mitigating measures, including medication. *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999). In *Sutton*, the court concluded that the plaintiffs were not disabled where their severe myopia was corrected to 20/20 vision with glasses because "[a] person whose physical or mental impairment is corrected by medication or other measures does not have an impairment that presently substantially limits a major life activity." *Id.*; *see also Doyal v. Oklahoma Heart, Inc.*, 213 F.3d 492, 498 (10th Cir. 2000) (plaintiff whose sleeping problems were mitigated by medication could not establish she was disabled); *Tangires v. John Hopkins Hosp.*, 79 F. Supp. 2d 587, 596 (D. Md. 2000) ("Since plaintiff's asthma is correctable by medication and since she voluntarily refused the recommended medication, her asthma did not substantially limit her in any major life activity."). Because plaintiff's condition is also controlled by medication, plaintiff cannot establish she is disabled within the meaning of the ADA.

B. GM Did Not Discriminate Against Plaintiff Based on Her Alleged Disability

Even if plaintiff could establish she was disabled (which she is not), plaintiff cannot establish GM discriminated against her on the basis of her alleged disability. Plaintiff first claims GM discriminated against her by failing to accommodate her alleged disability. Under the ADA, discrimination is defined to include "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." *Munoz v. Western Resources, Inc.*, 225 F.Supp.2d 1265, 1276 (D. Kan. 2002). The statute thus establishes a cause of action for disabled employees whose employers fail to reasonably accommodate them. *Id.* However, an employer is not required to always provide employee with the best possible accommodations or in the specific manner the employee requested. *Id.*

Plaintiff was not diagnosed with her alleged disability of bipolar disorder until early November 2005. [SOF 3]. Within one week of her diagnosis, plaintiff went on paid medical leave. [SOF 4]. Plaintiff did not make any requests for an accommodation during that one week period and did not thereafter return to work. [SOF 6-7, 42]. Plaintiff's personal physician and the independent medical examiner both released plaintiff to work without restriction. [SOF 5, 48]. *See id.* at 1277 (holding employer had no duty to accommodate employee released to work without restriction).

The only proposed accommodations which plaintiff presented were accommodations she created, then had her personal physician sign off on. [SOF 45]. Plaintiff did not, however, present her requests to GM until early January 2006, when she was on leave. [SOF 45]. The only request she discussed with GM, transfer to the first shift, was motivated by her child-care situation, not her condition and was also prohibited by the collective bargaining agreement. [SOF 43-44]. *See Tesh v. U.S. Postal Serv.*, 349 F.3d 1270, 1276 (10th Cir. 2003) (employer could not be held liable for failure to accommodate a restriction which was unrelated to the disability that employee claimed in his discrimination suit). Although plaintiff was not disabled, GM was willing to consider plaintiff's other requests and scheduled a meeting with plaintiff to discuss them, but plaintiff denied GM the opportunity to consider her requested accommodations by failing to return to work upon the expiration of her leave. [SOF 45-47]. GM cannot be held liable for failing to accommodate any alleged disability plaintiff may have had when it never was given the opportunity to act upon plaintiff's requests.

In addition, plaintiff has no evidence that GM's failure to accommodate or GM's termination decision were related to her disability. GM's adherence to the collective bargaining agreement dictating denial of plaintiff's request for transfer to the first shift and dictating her

termination constitute legitimate nondiscriminatory reasons for GM's actions. [SOF 7, 43-44]. As set forth above, plaintiff has no evidence these reasons are pretextual. *PVNF*, 487 F.3d at 805. GM is also entitled to summary judgment on plaintiff's disability discrimination claim.

CONCLUSION

WHEREFORE, General Motors Corporation prays the Court to enter summary judgment in its favor and against plaintiff on each and every claim raised in plaintiff's Complaint and/or the Pretrial Order, award GM its costs and expenses incurred in defending against these claims, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

LATHROP & GAGE L.C.

/s/ Heather R. Gill

Heather R. Gill Kansas No. 18847
David C. Vogel Kansas No. 18129
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri 64108-2684
Telephone: (816) 292-2000
Facsimile: (816) 292-2001

Attorney for Defendant General Motors Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the Court this 6th day of September, 2007, which will send a notice of electronic filing to the following counsel of record:

Mark Meyer
606 NE Applewood
Lee's Summit, MO 64063

Attorney For Plaintiff

/s/ Heather R. Gill
An Attorney for Defendant

Exhibit B

WEIL, GOTSHAL & MANGES LLP
1300 EYE STREET, NW
SUITE 900
WASHINGTON, DC 20005
(202) 682-7000
FAX: (202) 857-0939

WRITER'S DIRECT LINE

June 25, 2009

BY E-MAIL AND U.S. MAIL

Lisa Gross
1310 Wabash
Kansas City, MO 64127

Re: General Motors Corporation, Bankruptcy Case No. 09-50026

Dear Ms. Gross:

I write in response to the June 23rd filing you made with the United States Bankruptcy Court for the Southern District of New York regarding the above-referenced case. I note that in your filing you object to any language in the filings of the Debtors that would dissolve your claims in the bankruptcy or dissolve your claims in the Tenth Circuit Court of Appeals.

If you have a lawsuit pending against the Debtors, you have a claim against the Debtors in their bankruptcy proceedings. A committee has been established to represent the interests of unsecured creditors. Counsel for the Official Committee of Unsecured Creditors of General Motors Corporation can be contacted as follows:

Gordon Z. Novod, Thomas Moers Mayer
Kramer, Levin, Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-3275
(212) 715-8000 (fax)

The Committee should be able to answer questions you may have about filing a proof of claim in the bankruptcy proceedings.

Sincerely,

Brianna N. Benfield*

* Admitted to practice in Virginia only. Practicing under the supervision of members of the District of Columbia Bar.

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*,	:	
f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
	:	
Debtors.	:	**(Jointly Administered)**

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

I, Barbara Kelley Keane, being duly sworn, depose and state:

1. I am an Assistant Director with The Garden City Group, Inc., the claims and noticing agent for the debtors and debtors-in-possession (the "Debtors") in the above-captioned proceeding. Our business address is 105 Maxess Road, Melville, New York 11747.

2. Between September 24, 2009 and September 26, 2009, at the direction of Weil, Gotshal & Manges LLP, counsel for the Debtors in the above-captioned case, I caused to be served true and correct copies of the documents identified below addressed to each of the individuals and entities in the service lists attached hereto as Exhibit "A" (all parties listed in the Debtor's Schedules of Assets and Liabilities) and Exhibit "B" (including but not limited to all parties who filed a Notice of Appearance, the master service list, the creditor matrix and all other parties in interest) as follows:

(i) **Notice Of Bar Dates for Filing of Proofs of Claim (the "Notice")** and a customized **Proof of Claim** form addressed to each of the individuals and entities identified in the service list attached hereto as Exhibit "A"; and

(ii) **Notice** and a **Proof of Claim** form addressed to each of the individuals and entities identified in the service list attached hereto as Exhibit "B"

by depositing same in sealed, postage paid envelopes at a United States Post Office for delivery by the United States Postal Service via First Class Mail.

/s/ Barbara Kelley Keane

Sworn to before me this
14th day of October, 2009

/s/ Eamon Mason
Notary Public – State of New York
No 01MA6187254
My Commission Expires May 19, 2012

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION, *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM
(INCLUDING CLAIMS UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE)

TO ALL PERSONS AND ENTITIES WITH CLAIMS (INCLUDING CLAIMS UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE) AGAINST A DEBTOR SET FORTH BELOW:

Name of Debtor	Case Number	Tax Identification Number	Other Names Used by Debtors in the Past 8 Years
Motors Liquidation Company (f/k/a **General Motors Corporation**)	09-50026	38-0572515	General Motors Corporation GMC Truck Division NAO Fleet Operations GM Corporation GM Corporation-GM Auction Department National Car Rental National Car Sales Automotive Market Research
MLCS, LLC (f/k/a **Saturn, LLC**)	09-50027	38-2577506	Saturn, LLC Saturn Corporation Saturn Motor Car Corporation GM Saturn Corporation Saturn Corporation of Delaware
MLCS Distribution Corporation (f/k/a **Saturn Distribution Corporation**)	09-50028	38-2755764	Saturn Distribution Corporation
MLC of Harlem, Inc. (f/k/a **Chevrolet-Saturn of Harlem, Inc.**)	09-13558	20-1426707	Chevrolet-Saturn of Harlem, Inc. CKS of Harlem

PLEASE TAKE NOTICE THAT, on September 16, 2009, the United States Bankruptcy Court for the Southern District of New York (the "**Court**"), having jurisdiction over the chapter 11 cases of Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**") entered an order (the "**Bar Date Order**") establishing (i) **November 30, 2009, at 5:00 p.m. (Eastern Time)** as the last date and time for each person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, and trusts) to file a proof of claim ("**Proof of Claim**") based on prepetition claims, including a claim under section 503(b)(9) of the Bankruptcy Code, as described more fully below (a "**503(b)(9) Claim**"), against any of the Debtors (the "**General Bar Date**"); and (ii) **November 30, 2009, at 5:00 p.m. (Eastern Time)** as the last date and time for each governmental unit (as defined in section 101(27) of the Bankruptcy Code) to file a Proof of Claim based on prepetition claims against any of the Debtors (the "**Governmental Bar Date**" and, together with the General Bar Date, the "**Bar Dates**").

The Bar Date Order, the Bar Dates and the procedures set forth below for the filing of Proofs of Claim apply to all claims against the Debtors (other than those set forth below as being specifically excluded) that arose prior to **June 1, 2009**, the date on which the Debtors commenced their cases under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

If you have any questions relating to this Notice, please feel free to contact AlixPartners at 1-800-414-9607 or by e-mail at claims@motorsliquidation.com. In addition, you may contact the Official Committee of Unsecured Creditors through its website at www.motorsliquidationcreditorscommittee.com or at 1-212-715-3275.

YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE ANY QUESTIONS, INCLUDING WHETHER YOU SHOULD FILE A PROOF OF CLAIM.

1. WHO MUST FILE A PROOF OF CLAIM

You **MUST** file a **Proof of Claim** to vote on a chapter 11 plan filed by the Debtors or to share in any of the Debtors' estates if you have a claim that arose prior to **June 1, 2009**, including a 503(b)(9) Claim, and it is not one of the other types of claims described in Section 2 below. Acts or omissions of the Debtors that arose before **June 1, 2009** may give rise to claims against the Debtors that must be filed by the applicable Bar Date, notwithstanding that such claims may not have matured or become fixed or liquidated or certain prior to **June 1, 2009.**

Pursuant to section 101(5) of the Bankruptcy Code and as used in this Notice, the word "claim" means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. Further, claims include unsecured claims, secured claims, priority claims, and 503(b)(9) Claims (as defined in Section 2(d) below).

2. WHO NEED NOT FILE A PROOF OF CLAIM

You need not file a Proof of Claim if:

(a) Your claim is listed on the Schedules (as defined below) and (i) is **not** described in the Schedules as "disputed," "contingent," or "unliquidated," (ii) you do **not** dispute the amount or nature of the claim set forth in the Schedules, and (iii) you do **not** dispute that the claim is an obligation of the specific Debtor against which the claim is listed on the Schedules;

(b) Your claim has been paid in full;

(c) You hold an interest in any of the Debtors, which interest is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; **provided**, **however**, that interest holders who wish to assert claims (as opposed to ownership interests) against any of the Debtors that arise out of or relate to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, must file Proofs of Claim on or before the applicable Bar Date, unless another exception identified herein applies;

(d) You hold a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative claim; **provided, however, 503(b)(9) Claims are subject to the General Bar Date as provided above.** Section 503(b)(9) provides in part: "...there shall be allowed administrative expenses...including...(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." **Accordingly, if you have a 503(b)(9) Claim, you must file a Proof of Claim on or before the General Bar Date;**

(e) You hold a claim that has been allowed by an order of the Court entered on or before the applicable Bar Date;

(f) You hold a claim against any of the Debtors for which a separate deadline is fixed by the Court (whereupon you will be required to file a Proof of Claim by that separate deadline);

(g) You are a Debtor in these cases having a claim against another Debtor;

(h) You are an affiliate (as defined in section 101(2) of the Bankruptcy Code) of any Debtor as of the Bar Date;

(i) You hold a claim for which you have already properly filed a Proof of Claim against any of the Debtors with the Clerk of the Court or The Garden City Group, Inc., the Debtors' claims agent, utilizing a claim form that substantially conforms to the Proof of Claim Form (as defined below) or Official Form 10; or

(j) You hold a claim that is limited exclusively to the repayment of principal, interest and other fees and expenses on or under any agreements (a "**Debt Claim**") governing any debt security issued by any of the Debtors pursuant to an indenture (together, the "**Debt Instruments**") if the indenture trustee or similar fiduciary under the applicable indenture or fiscal and paying agency agreement files a Proof of Claim against the applicable Debtor, on or before the Bar Date, on account of all Debt Claims against such Debtor under the applicable Debt Instruments, **provided, however**, that any holder of a Debt Claim wishing to assert a claim arising out of or relating to a Debt Instrument, other than a Debt Claim, shall be required to file a Proof of Claim with respect to such claim on or before the Bar Date, unless another exception identified herein applies. Debt Instruments include those agreements listed at the end of this Notice.

YOU SHOULD NOT FILE A PROOF OF CLAIM IF YOU DO NOT HAVE A CLAIM AGAINST THE DEBTORS.

THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT THE DEBTORS OR THE COURT BELIEVE THAT YOU HAVE A CLAIM.

3. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

If you hold a claim arising from the rejection of an executory contract or unexpired lease, you must file a Proof of Claim based on such rejection by the later of (i) the applicable Bar Date, and (ii) the date which is **thirty days** following the entry of the order approving such rejection or you will be forever barred from doing so. Notwithstanding the foregoing, if you are a party to an executory contract or unexpired lease and you wish to assert a claim on account of unpaid amounts accrued and outstanding as of June 1, 2009 pursuant to that executory contract or unexpired lease (other than a rejection damages claim), you must file a Proof of Claim for such amounts on or before the applicable Bar Date unless an exception identified above applies.

4. WHEN AND WHERE TO FILE

All Proofs of Claim must be filed so as to be **actually received** on or before the applicable Bar Date at the following address:

If by overnight courier or hand delivery to:

The Garden City Group, Inc.
Attn: Motors Liquidation Company Claims Processing
5151 Blazer Parkway, Suite A
Dublin, Ohio 43017

If by first-class mail, to:

The Garden City Group, Inc.
Attn: Motors Liquidation Company Claims Processing
P.O. Box 9386
Dublin, Ohio 43017-4286

Or if by hand delivery to:

United States Bankruptcy Court, SDNY
One Bowling Green
Room 534
New York, New York 10004

Proofs of Claim will be deemed timely filed only if **actually received** by The Garden City Group, Inc. or the Court on or before the applicable Bar Date. Proofs of Claim may **not** be delivered by facsimile, telecopy, or electronic mail transmission.

5. WHAT TO FILE

If you file a Proof of Claim, your filed Proof of Claim must: (i) be written in the English language; (ii) be denominated in lawful currency of the United States; (iii) conform substantially to the form provided with this Notice ("**Proof of Claim Form**") or Official Bankruptcy Form No. 10; (iv) state the Debtor against which it is filed; (v) set forth with specificity the legal and factual basis for the alleged claim; (vi) include supporting documentation or an explanation as to why such documentation is not available; and (vii) be **signed** by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant.

IF YOU ARE ASSERTING A CLAIM AGAINST MORE THAN ONE DEBTOR, SEPARATE PROOFS OF CLAIM MUST BE FILED AGAINST EACH SUCH DEBTOR AND YOU MUST IDENTIFY ON YOUR PROOF OF CLAIM THE SPECIFIC DEBTOR AGAINST WHICH YOUR CLAIM IS ASSERTED AND THE CASE NUMBER OF THAT DEBTOR'S BANKRUPTCY CASE. A LIST OF THE NAMES OF THE DEBTORS AND THEIR CASE NUMBERS IS SET FORTH ABOVE.

Additional Proof of Claim Forms may be obtained at www.uscourts.gov/bkforms/ or www.motorsliquidation.com.

YOU SHOULD ATTACH TO YOUR COMPLETED PROOF OF CLAIM FORM COPIES OF ANY WRITINGS UPON WHICH YOUR CLAIM IS BASED. IF THE DOCUMENTS ARE VOLUMINOUS, YOU SHOULD ATTACH A SUMMARY.

6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE APPLICABLE BAR DATE

Except with respect to claims of the type set forth in Section 2 above, any creditor who fails to file a Proof of Claim on or before the applicable Bar Date in the appropriate form in accordance with the procedures described in this Notice for any claim such creditor holds or wishes to assert against each of the Debtors, will be forever barred – that is, forbidden – from asserting the claim against each of the Debtors and their respective estates (or filing a Proof of Claim with respect to the claim), and each of the Debtors and their respective chapter 11 estates, successors, and property will be forever discharged from any and all indebtedness or liability with respect to the claim, and the holder will not be permitted to vote to accept or reject any chapter 11 plan filed in these chapter 11 cases, participate in any distribution in any of the Debtors' chapter 11 cases on account of the claim, or receive further notices with respect to any of the Debtors' chapter 11 cases.

7. THE DEBTORS' SCHEDULES, ACCESS THERETO, AND CONSEQUENCES OF AMENDMENT THEREOF

You may be listed as the holder of a claim against one or more of the Debtors in the Debtors' Schedules of Assets and Liabilities and/or Schedules of Executory Contracts and Unexpired Leases (collectively, the "**Schedules**"). If you rely on the Debtors' Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules.

As set forth above, if you agree with the classification and amount of your claim as listed in the Debtors' Schedules, and if you do not dispute that your claim is only against the specified Debtor, and if your claim is not described as "disputed", "contingent", or "unliquidated", you need not file a Proof of Claim. Otherwise, or if you decide to file a Proof of Claim, you must do so before the Bar Date in accordance with the procedures set forth in this Notice.

Copies of the Schedules may be examined by interested parties on the Court's electronic docket for the Debtors' chapter 11 cases, which is posted on the Internet at www.motorsliquidation.com and www.nysb.uscourts.gov (a PACER login and password are required and can be obtained through the PACER Service Center at www.pacer.psc.uscourts.gov.). Copies of the Schedules may also be examined by interested parties between the hours of 9:00 a.m. and 4:30 p.m. (Eastern Time) at the office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Room 511, New York, New York 10004. Copies of the Debtors' Schedules may also be obtained by written request to the Debtors' claims agent at the address and telephone number set forth below:

The Garden City Group, Inc.
Attn: Motors Liquidation Company
P.O. Box 9386
Dublin, Ohio 43017-4286
1-703-286-6401

In the event that the Debtors amend their Schedules to (a) designate a claim as disputed, contingent, unliquidated, or undetermined, (b) change the amount of a claim reflected therein, (c) change the classification of a claim reflected therein, or (d) add a claim that was not listed on the Schedules, the Debtors will notify you of the amendment. In such case, the deadline for you to file a Proof of Claim on account of any such claim is the later of (a) the applicable Bar Date and (b) the date that is **thirty days** after the Debtors provide notice of the amendment.

A holder of a possible claim against the Debtors should consult an attorney regarding any matters not covered in this Notice, such as whether the holder should file a Proof of Claim.

DATED: September 16, 2009
New York, New York

BY ORDER OF THE COURT

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

Certain Debt Instruments

	Debt Instrument	CUSIP, ISIN, or Swiss Security Numbers
1	Indenture, dated as of Nov. 15, 1990, between GM and Citibank as indenture trustee	CUSIP Nos. 370442AN5, 370442AJ4, 370442AR6, 37045EAG3, 37045EAS7
2	Indenture, dated as of Dec. 7, 1995, between GM and Citibank as indenture trustee	CUSIP Nos. 370442AT2, 370442AU9, 370442AV7, 370442AZ8, 370442BB0, 370442816, 370442774, 370442766, 370442758, 370442741, 370442733, 370442725, 370442BQ7, 370442BT1, 370442717, 370442BW4, 370442BS3, 370442121, 370442691
3	Trust Indenture, dated as of July 1, 1995, between Michigan Strategic Fund and Dai-Ichi Kangyo Trust Company of New York ($58,800,000 Multi-Modal Interchangeable Rate Pollution Control Refunding Revenue Bonds)	CUSIP No. 594693AQ6
4	Indenture of Trust, dated as of July 1, 1994, between City of Moraine, Ohio and Dai-Ichi Kangyo Trust Company of New York ($12,500,000 Solid Waste Disposal Revenue Bonds)	CUSIP No. 616449AA2
5	Indenture of Trust, dated as of July 1, 1999, between City of Moraine, Ohio and Dai-Ichi Kangyo Trust Company of New York ($10,000,000 Solid Waste Disposal Revenue Bonds)	CUSIP No. 616449AB0
6	Trust Indenture, dated as of Dec. 1, 2002, among City of Fort Wayne, Indiana, JPMorgan Chase Bank and Bank One Trust Company, N.A., ($31,000,000 Pollution Control Revenue Refunding Bonds)	CUSIP No. 455329AB8
7	Trust Indenture, dated as of Mar. 1, 2002, between Ohio Water Development Authority and JPMorgan Chase Bank ($20,040,000 State of Ohio Pollution Control Refunding Revenue Bonds)	CUSIP No. 667596AU2
8	Indenture of Trust, dated as of Dec. 1, 2002, between Ohio Water Development Authority and JPMorgan Chase Bank ($46,000,000 State of Ohio Solid Waste Revenue Bonds)	CUSIP No. 67759ABC2
9	Trust Indenture, dated as of Apr. 1, 1984, among City of Indianapolis, Indiana, Bankers Trust Company and The Indiana National Bank ($1,400,000 Pollution Control Revenue Bonds)	CUSIP No. 455329AB8

10	Fiscal and Paying Agency Agreement, dated as of July 3, 2003, between GM, Deutsche Bank AG London, as fiscal agent and paying agent, and Banque Générale du Luxembourg S.A., as paying agent	ISIN Nos. XS0171942757, XS0171943649
11	Fiscal and Paying Agency Agreement, dated as of July 10, 2003, between GM Nova Scotia Finance Company, GM, as guarantor, Deutsche Bank Luxembourg S.A., as fiscal agent and paying agent, and Banque Générale du Luxembourg S.A., as paying agent	ISIN Nos. XS0171922643, XS0171908063.
12	Bond Purchase and Paying Agency Agreement dated May 28, 1986 between GM and Credit Suisse	Swiss Security No. 876 926

Name	Address1	Address2	Address3	Address4	City	State	Zip
GROSS, KENNETH E	17341 ELLSWORTH RD				LAKE MILTON	OH	44429-9564
GROSS, KENNETH L	1134 DITCH RD				NEW LOTHROP	MI	48460-9648
GROSS, KENNETH W	4819 W COUNTY RD 850 N				FRANKTON	IN	46044
GROSS, KEVIN G	31322 EVENINGSIDE				FRASER	MI	48026-3324
GROSS, KEVIN S	32501 E REBER RD				SIBLEY	MO	64088-9169
GROSS, KING	95 RUTH AVE				PONTIAC	MI	48341-1926
GROSS, KURT A	9396 N LINDEN RD				CLIO	MI	48420-8584
GROSS, LANA LYNN	244 SOUTH MIAMI STREET				WEST MILTON	OH	45383-1527
GROSS, LARRY D	105 LAKESHORE DR				CLARKSTON	MI	48348-1476
GROSS, LARRY J	10209 DODGE RD				MONTROSE	MI	48457-9034
GROSS, LAVERN L	8554 VOLKMER RD				CHESANING	MI	48616-9790
GROSS, LAWRENCE D	6474 W BIRCH RUN RD				SAINT CHARLES	MI	48655-9629
GROSS, LEON C	PO BOX 618	3550 OLD PINE TRAIL			PRUDENVILLE	MI	48651-0618
GROSS, LEONARD E	302 S ALP ST				BAY CITY	MI	48706-4271
GROSS, LINDA L.	14158 NEFF RD				CLIO	MI	48420-8846
GROSS, LISA K	1107 WILSON BLVD				ANDERSON	IN	46012-4544
GROSS, LISA P	1310 WABASH AVENUE				KANSAS CITY	MO	64127-2020
GROSS, LISA PATRICE	1310 WABASH AVENUE				KANSAS CITY	MO	64127-2020
GROSS, LOREN E	690 GABLE DR				FREMONT	CA	94539-7519
GROSS, LORRAINE S	5536 S ANITA DR				SAGINAW	MI	48601-9235
GROSS, LORRAINE S	912 SUN KEY CT				SUN CITY CENTER	FL	33573
GROSS, LOUIS A	730 MONARCHOS DR				HAVRE DE GRACE	MD	21078-4010
GROSS, LOUIS AUGUST	5501 CHESANING RD				CHESANING	MI	48616-8421
GROSS, LOWELL R	18536 COUNTY ROAD 111				DEFIANCE	OH	43512-8300
GROSS, LUCY	100 PLEASANT ST				MEDINA	NY	14103-1328
GROSS, LYLE K	178 PINE DR S				MASON	MI	48854-9658
GROSS, LYLE S	591 SALT SPRINGS RD				WARREN	OH	44481-9616
GROSS, MABLE H	1306 SOUTH PERSHIN DR.				MUNCIE	IN	47302
GROSS, MARGA	12903 W BONANZA DR				SUN CITY WEST	AZ	85375-3217
GROSS, MARGARET A	1402 ARLINGTON DR				FAIRBORN	OH	45324-5604
GROSS, MARGARET G	1110 STURWOOD WAY				LAWRENCE TWP	NJ	08648-1521
GROSS, MARIE C	337 WISTERIA DR				DAYTON	OH	45419-3554
GROSS, MARJORIE J	9524 CHARRON DR	PO BOX 6			NEW LOTHROP	MI	48460-9692
GROSS, MARK F	6040 EAST AVE				NEWFANE	NY	14108
GROSS, MARLENE K	1001 W PUETZ RD				OAK CREEK	WI	53154-2851
GROSS, MARTHA	1922 SWANEY RD				WALLED LAKE	MI	48390-3253
GROSS, MARTHA E	5770 FREEWALD BLVD				MILLINGTON	MI	48746-8802
GROSS, MARY	1220 WALNUT VALLEY LANE				DAYTON	OH	45458-9683
GROSS, MARY E	10607 W 56TH TER				SHAWNEE	KS	66203-2305
GROSS, MARY L	347 S RANDALL AVE				JANESVILLE	WI	53545-4250
GROSS, MATTHEW E	4298 MOUNT VERNON PASS				SWARTZ CREEK	MI	48473-8240
GROSS, MATTHEW E	6203 THORNRIDGE DR				GRAND BLANC	MI	48439-8974
GROSS, MATTHEW S	32501 E REBER RD				SIBLEY	MO	64088-9169
GROSS, MAYNARD A	1331 FERDEN RD				NEW LOTHROP	MI	48460-9616
GROSS, MELVIN D	2212 SOUTHLEA DR				CENTERVILLE	OH	45459-3641
GROSS, MICHAEL A	1122 BOGEY DR				MANSFIELD	OH	44903-6525
GROSS, MICHAEL F	1996 ROBERTS RD				BASOM	NY	14013-9721
GROSS, MICHAEL H	3372 RENAULT DR				FLINT	MI	48507-3364
GROSS, MICHAEL HADEN	3372 RENAULT DR				FLINT	MI	48507-3364
GROSS, MICHAEL J	17647 BISHOP RD				CHESANING	MI	48616-9732
GROSS, MICHAEL W	1204 SILVERTHORNE RD				BALTIMORE	MD	21239-3433
GROSS, MICHAEL W	12785 S GRANGE RD				EAGLE	MI	48822-9662
GROSS, MICHELE	46 GREENWOOD AVE				BETHEL	CT	06801-2602
GROSS, MONTREW C	1061 INA CIR				FRANKLIN	IN	46131-9194
GROSS, NANCY Y	720 W STATE ROAD 18				KOKOMO	IN	46901-7534
GROSS, NEILON L	900 W LAKE RD	C123			PALM HARBOR	FL	34684-3157

The Garden City Group, Inc.

APS Mail Detail

Name	Address	City	State	Zip	Zip+4	Form Description	Create Date	Mail Status
GROSS, LISA PATRICE	6604 EAST 12TH STREET	KANSAS CITY	MO	64126	2208	Bar Date Mailing (Notice and POC)	09/18/09	Remailed From NCOA Completed
GROSS, LISA PATRICE	619 N GALLATIN ST	LIBERTY	MO	64068		Bar Date Mailing (Notice and POC)	10/29/09	Remailed
GROSS, LISA PATRICE	1310 WABASH AVE	KANSAS CITY	MO	64127	2020	Bar Date Mailing (Notice and POC)	11/17/09	Undeliverable

Exhibit D

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LISA GROSS,	)	
	)	
Appellant,	)	
	)	Case No. 08-3236
v.	)	
	)	
GENERAL MOTORS,	)	
	)	
Appellee.	)	

APPELLEE'S RESPONSE TO APPELLANT'S
MOTION FOR RELIEF FROM AUTOMATIC STAY

In response to Appellant's "Motion for Relief From Automatic Stay," Appellee General Motors Corporation states that the stay remains in effect as to General Motors Corporation. Appellee, however, does not oppose Appellant's motion to lift the stay provided that, pursuant to FED. R. APP. P. 43(b), the Court enters an Order substituting General Motors LLC as the proper and new Appellee in this matter going forward.

WHEREFORE, for the foregoing reasons, Appellee General Motors Corporation respectfully states that it does not oppose Appellant's motion and further requests that the Court enter an Order substituting General Motors LLC as the Appellee in this matter, and for whatever other and further relief the Court deems just and proper.

Respectfully submitted,

LATHROP & GAGE LLP

/s/ Shelley I. Ericsson
David C. Vogel Kansas No. 18129
Shelley I. Ericsson Kansas No. 78023
2345 Grand Boulevard, Suite 2200
Kansas City, Missouri 64108-2684
Telephone: (816) 292-2000
Facsimile: (816) 292-2001
dvogel@lathropgage.com
sericsson@lathropgage.com

Attorneys for Appellee General Motors Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above pleading was served, by first class United States mail, postage prepaid, on the following this 18th day of February, 2010:

Lisa Gross
6460 NE 43rd Terrace, #204
Kansas City, Missouri 64117

Appellant Pro Se

/s/ Shelley I. Ericsson
An Attorney for Appellee

Exhibit E

FILED
United States Court of Appeals
Tenth Circuit

February 23, 2010

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LISA PATRICE GROSS,

Plaintiff-Appellant,

v.

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

No. 08-3236

ORDER

Lisa Patrice Gross filed a motion asking this court to grant her relief from the automatic stay imposed in the General Motors Corporation bankruptcy case, in order to allow this appeal to proceed. General Motors Corporation filed a response indicating it does not object to the court granting Ms. Gross's motion, provided that the court also enters an order substituting General Motors LLC as the appellee in this matter. At the direction of the panel assigned to hear this case on the merits, the motion is denied because this court has no authority to grant relief from the automatic stay.

The bankruptcy court is the proper forum in which to request relief from an automatic stay. Title 11 of the United States Code, § 362(d), provides that a bankruptcy court may grant relief from an automatic stay "[o]n request of a party

after notice and a hearing." Thus, Ms. Gross must pursue the relief she seeks in the bankruptcy court.

Appellant's Motion for Relief from Automatic Stay is DENIED.

Entered for the Court,

Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk

Exhibit F

WEIL, GOTSHAL & MANGES LLP
1300 I STREET, N.W.
SUITE 900
WASHINGTON, D.C. 20005
(202) 682-7000
FAX: (202) 857-0940

BEIJING
BOSTON
BUDAPEST
DALLAS
DUBAI
FRANKFURT
HONG KONG
HOUSTON
LONDON
MIAMI
MUNICH
NEW YORK
PARIS
PRAGUE
PROVIDENCE
SHANGHAI
SILICON VALLEY
WARSAW

DIRECT LINE
202-682-7206
brianna.benfield@weil.com

March 24, 2010

BY FEDEX

Lisa Gross
6460 NE 43rd Terrace
Number 204
Kansas City, MO 64117

Re: Request for Relief from Automatic Stay
In re: Motors Liquidation Company
Chapter 11 Case No. 09-50026

Dear Ms. Gross:

We are bankruptcy counsel to Motors Liquidation Company (f/k/a General Motors Corporation) ("MLC") in the above-referenced chapter 11 case (the "Bankruptcy Case"). We write in response to the Request for Relief from the Automatic Stay (the "Request"), which you filed in the Bankruptcy Case on March 2, 2010. Your Request indicates that you wish to proceed with an appeal (the "Appeal") of an employment discrimination case against MLC currently pending before the United States Court of Appeals for the Tenth Circuit, case number 08-3236.

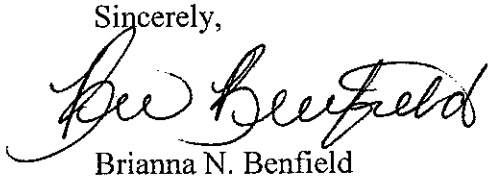
On July 10, 2009, MLC consummated the sale of substantially all of its assets to NGMCO, Inc. (n/k/a General Motors, LLC) pursuant to that certain Amended and Restated Master Sale and Purchase Agreement ("MPA"). Pursuant to the MPA, General Motors, LLC assumed certain liabilities, including liabilities for employment discrimination claims brought by any employee that is or was covered by the UAW Collective Bargaining Agreement. MLC believes that liability for your employment discrimination claim was therefore assumed by General Motors, LLC. We have taken the

liberty of speaking to General Motors, LLC and they acknowledge that they should be substituted in as the true party in your Appeal.

General Motors, LLC is not a debtor in the Bankruptcy Case and is not subject to the automatic stay. Therefore your motion to lift the stay is not necessary, rather you should seek to substitute General Motors, LLC for MLC in your Appeal before the Tenth Circuit. We would therefore urge you to withdraw your lift stay request pending in the Bankruptcy Case. Please let us know as soon as possible whether you agree to do so. Unless we hear otherwise, we intend to file an objection on the foregoing grounds later this week.

Should you have any questions regarding the forgoing, please do not hesitate to contact the undersigned.

Sincerely,



Brianna N. Benfield