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Gulf Stream – Compass CLO 2007 Ltd. and
Gulf Stream – Sextant CLO 2007-1 Ltd.*

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

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

**ANSWER OF DEFENDANTS GULF STREAM – COMPASS CLO 2007 LTD.,
AND GULF STREAM – SEXTANT CLO 2007-1 LTD.**

Defendants Gulf Stream – Compass CLO 2007 Ltd. and Gulf Stream – Sextant CLO 2007-1 Ltd. (collectively “**Gulf Stream**” or the “**Gulf Stream Defendants**”),¹ by their undersigned attorneys, Hahn & Hessen LLP, hereby answer the Amended Complaint dated May 20, 2015 (the “**Amended Complaint**”) of Plaintiff Motors Liquidation Company Avoidance Action Trust, by and through the Wilmington Trust Company, solely in its capacity as the trust administrator and trustee (the “**Plaintiff**” or “**AAT**”).

AS TO THE ALLEGED JURISDICTION AND VENUE

1. States that the allegations of paragraph 1 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Amended Complaint.

2. States that the allegations of paragraph 2 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Amended Complaint.

3. States that the allegations of paragraph 3 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies that it is subject to the Bankruptcy Court’s jurisdiction, and Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations of paragraph 3 of the Amended Complaint.

¹ Named defendant Gulf Stream Compass CLO 2003-1 Ltd. was dissolved on April 17, 2014, prior to the Plaintiff’s attempted service of the summons and amended complaint, and is therefore a nonparty. However, if the Court finds it is a proper defendant, Gulf Stream Compass CLO 2003-1 Ltd. should be deemed part of Gulf Stream and to join in this answer as an additional Gulf Stream Defendant.

4. States the allegations of paragraph 4 of the Amended Complaint do not contain any allegations against Gulf Stream, making a responsive pleading unnecessary. To the extent a response is required, in accordance with Local Bankruptcy Rule 7012-1, Gulf Stream further states that it does not consent to the entry of final orders or judgment by the Bankruptcy Court if it is determined that the Bankruptcy Court cannot enter a final judgment or order consistent with Article III of the United States Constitution.

5. States that the allegations of paragraph 5 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations of paragraph 5 of the Amended Complaint.

AS TO THE ALLEGED PARTIES

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

7. Admits, on information and belief, the allegations of Paragraph 7 of the Amended Complaint.

8. States that the allegations of paragraph 8 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Amended Complaint, except

admits, on information and belief, that on June 25, 2009, the Court issued the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties* (the “**DIP Order**”) and refers to the DIP Order for the terms set forth therein.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Amended Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Amended Complaint.

12. States that the allegations of paragraph 12 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Amended Complaint, except admits, on information and belief, that the Court entered an order (the “**Confirmation Order**”) confirming the *Debtors’ Second Amended Joint Chapter 11 Plan* (the “**Plan**”) and refers to the Plan for the terms set forth therein.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Amended Complaint.

14. States that the allegations of paragraph 14 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a

response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Amended Complaint and refers to the DIP Order, the Confirmation Order, the Plan and the Trust Agreement (as defined in the Amended Complaint) for the terms set forth therein.

15. The allegations set forth in paragraphs 15 through 213 and 217 through 568 of the Amended Complaint do not contain any allegations against Gulf Stream, and as such no response is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of each of paragraphs 15 through 213 and 217 through 568 of the Amended Complaint.

214. In the event the Court were to determine Gulf Stream Compass CLO 2003-1 Ltd. is a proper defendant (*see* note 1, *supra*), Gulf Stream Compass CLO 2003-1 Ltd. (1) states that the allegations of paragraph 214 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required, and (2) to the extent a response is required, denies the allegations contained in paragraph 214, except admits that Gulf Stream Compass CLO 2003-1 Ltd. received funds from JPMorgan Chase Bank, N.A. (“**JPMorgan**”) in good faith in accordance with the terms of the Term Loan Agreement (as defined in the Amended Complaint).

215. States that the allegations of paragraph 215 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, denies the allegations contained in paragraph 215, except admits that Gulf Stream – Compass CLO 2007 Ltd. received funds from JPMorgan in good faith in accordance with the terms of the Term Loan Agreement.

216. States that the allegations of paragraph 216 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, denies the allegations contained in paragraph 216, except admits that Gulf Stream – Sextant CLO 2007-1 Ltd. in good faith in accordance with the terms of the Term Loan Agreement.

569. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 569 of the Amended Complaint and states that the last sentence of paragraph 569 contains legal conclusions as to which no responsive pleading is required.

570. States that the allegations of paragraph 570 of the Amended Complaint constitute statements as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies the allegations set forth in paragraph 570 of the Amended Complaint, except admits that the Trust collectively refers to the parties listed in Paragraphs 15 through 569 of the Amended Complaint as “Defendants”.

571. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 571 of the Amended Complaint, except admits, on information and belief, that General Motors Corporation, Saturn Corporation and JPMorgan, as Administrative Agent, were parties to the Term Loan Agreement (as defined in the Amended Complaint) and refers to the Term Loan Agreement for the terms set forth therein.

572. Denies the allegations contained in paragraph 572 of the Amended Complaint as to Gulf Stream, denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations, and refers to the Term Loan Agreement for the terms set forth therein.

573. Admits the allegations of paragraph 573 of the Amended Complaint.

574. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 574 of the Amended Complaint, except admits, on information and belief, that the Debtors filed a motion on the Petition Date (the “**DIP Motion**”), and refers to the DIP Motion for the terms set forth therein.

575. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 575 of the Amended Complaint, except admits, on information and belief, that the Debtors filed the DIP Motion and refers to the DIP Motion for the terms set forth therein.

576. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 576 of the Amended Complaint.

577. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 577 of the Amended Complaint, except admits that the DIP Credit Facility (as defined in the DIP Order) was approved by the Bankruptcy Court and that the DIP Order provides the Committee with certain limited rights “with respect only to the perfection of first priority lines of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

578. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 578 of the Amended Complaint, except admits that the interest and principal outstanding at the time of payment under the Term Loan Agreement has been repaid out of the proceeds of the DIP Credit Facility (as defined in the DIP Order) and refers to the DIP Order for the terms set forth therein.

579. States that the allegations of paragraph 579 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, the Gulf Stream Defendants deny that they are subject to the Bankruptcy Court's jurisdiction, and Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations of paragraph 579 of the Amended Complaint and refers to the DIP Order for the terms set forth therein.

580. Denies the truth of the allegations of paragraph 580 of the Amended Complaint, except admits, on information and belief, that the Committee (as defined in the Amended Complaint) commenced this action.

581. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 581 of the Amended Complaint, except admits, on information and belief, that Term Loan UCC financing statements were filed with the Delaware Secretary of State on November 30, 2006 in connection with the Term Loan Agreement (the "**Term Loan UCC Financing Statements**"), and refers to the Term Loan UCC Financing Statements for the terms set forth therein.

582. Denies the allegations set forth in paragraph 582 of the Amended Complaint, except admits that a UCC-3 financing statement amendment dated October 30, 2008 (the "**October 2008 Amendment**") was filed with the Delaware Secretary of State, and respectfully refers to the October 2008 Amendment for the terms set forth therein.

583. States that the allegations of paragraph 583 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies the allegations of paragraph 583 of the Amended Complaint.

584. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 584 of the Amended Complaint, except admits, on information and belief, that on March 1, 2013, this Court entered an order and refers to the March 1, 2013 order for the terms set forth therein.

585. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 585 of the Amended Complaint, except admits, on information and belief, that on January 21, 2015, the United States Court of Appeals for the Second Circuit entered a decision and refers to the January 21, 2015 decision for the terms set forth therein.

**AS TO THE ALLEGED
FIRST CLAIM FOR RELIEF**

586. Repeats and re-alleges its responses to paragraphs 1 through 585 of the Amended Complaint with the same force and effect as if fully set forth herein.

587. States that the allegations of paragraph 587 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 587 of the Amended Complaint.

588. The allegations set forth in paragraph 588 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, Gulf Stream denies the allegations of paragraph 588 of the Amended Complaint.

589. The allegations set forth in paragraph 589 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is

required, Gulf Stream denies the allegations of paragraph 589 of the Amended Complaint.

**AS TO THE ALLEGED
SECOND CLAIM FOR RELIEF**

590. Repeats and re-alleges its responses to paragraphs 1 through 589 of the Amended Complaint with the same force and effect as if fully set forth herein.

591. Denies the allegations of paragraph 591 of the Amended Complaint.

592. States that the allegations of paragraph 592 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream admits that Section 549(a) of the Bankruptcy Code states that “the trustee may avoid a transfer of property of the estate...that occurs after the commencement of the case...that is not authorized...by the court” and refers to Section 549 of the Bankruptcy Code for the provisions set forth therein.

593. Denies the allegations set forth in paragraph 593 of the Amended Complaint, except admits, on information and belief, that the Court issued the DIP Order and refers to the DIP Order for the terms set forth therein.

594. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 594 of the Amended Complaint.

595. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 595 of the Amended Complaint.

596. Denies the allegations of paragraph 596 of the Amended Complaint.

597. Denies the allegations set forth in paragraph 597 of the Amended Complaint, except admits, on information and belief, that the Court issued the DIP Order and refers to the DIP Order for the terms set forth therein.

598. Denies the allegations of paragraph 598 of the Amended Complaint.

599. Denies the allegations of paragraph 599 of the Amended Complaint.

600. States that the allegations of paragraph 600 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies the allegations of paragraph 600 of the Amended Complaint.

601. Denies the allegations of paragraph 601 of the Amended Complaint, except admits that some portion of the collateral was secured and perfected by filings other than the Financing Statement.

602. States that the allegations of paragraph 602 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 602 of the Amended Complaint.

603. States that the allegations of paragraph 603 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies the allegations of paragraph 603 of the Amended Complaint.

**AS TO THE ALLEGED
THIRD CLAIM FOR RELIEF**

604. Repeats and re-alleges its responses to paragraphs 1 through 603 of the Amended Complaint with the same force and effect as if fully set forth herein.

605. Denies the allegations of paragraph 605 of the Amended Complaint.

606. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 606 of the Amended Complaint.

607. The allegations set forth in paragraph 607 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 607 of the Amended Complaint.

608. States that the allegations of paragraph 608 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 608 of the Amended Complaint.

609. States that the allegations of paragraph 609 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 609 of the Amended Complaint.

610. States that the allegations of paragraph 610 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 610 of the Amended Complaint.

611. States that the allegations of paragraph 611 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 611 of the Amended Complaint.

612. Denies the allegations of paragraph 612 of the Amended Complaint.

613. Denies the allegations of paragraph 613 of the Amended Complaint.

614. States that the allegations of paragraph 614 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 614 of the Amended Complaint.

615. States that the allegations of paragraph 615 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies the allegations of paragraph 615 of the Amended Complaint.

**AS TO THE ALLEGED
FOURTH CLAIM FOR RELIEF**

616. Repeats and re-alleges its responses to paragraphs 1 through 615 of the Amended Complaint with the same force and effect as if fully set forth herein.

617. States that the allegations of paragraph 617 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies the allegations of paragraph 617 of the Amended Complaint.

618. States that the allegations of paragraph 618 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Gulf Stream denies the allegations of paragraph 618 of the Amended Complaint.

619. States that the Plaintiff's request for judgment in the Amended Complaint constitutes legal conclusions as to which no responsive pleading is required. To the extent a

response is required, Gulf Stream further denies and objects to each one of the Plaintiff's "prays for judgment" numbered 1 through 8 and set forth on pages 77 and 78 of the Amended Complaint.

620. The Gulf Stream Defendants deny each and every material allegation not heretofore controverted and demand strict proof thereof.

AFFIRMATIVE DEFENSES

By way for further defenses, Gulf Stream asserts the following. By virtue of alleging these further defenses, Gulf Stream does not assume any burden of proof, persuasion or production not otherwise legally assigned to it. Gulf Stream reserves the right to further amend its answer and raise any additional defenses, counterclaims, cross-claims and third-party claims not asserted herein if and when they become appropriate.

AS A FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

The Amended Complaint fails to state a claim against Gulf Stream upon which relief may be granted.

AS A SECOND AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

Plaintiff is estopped from alleging that the security interest of JPMorgan, as Administrative Agent, was terminated or, in the alternative, the Bankruptcy Court should find that the Debtors held the collateral under the Term Loan Agreement pursuant to a constructive trust.

AS A THIRD AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

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

**AS A FOURTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

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

**AS A FIFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The October 2008 Amendment is void and ineffective because JPMorgan, in its capacity as Administrative Agent for the Synthetic Lease, was not the secured party of record under the Term Loan UCC Financing Statements and therefore had no power or authority to authorize the Debtors to file the October 2008 Amendment.

**AS A SIXTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

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

**AS A SEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The October 2008 Amendment is void and ineffective because JPMorgan, both in its capacity as administrative agent for the Synthetic Lease and in its capacity as

Administrative Agent for the Term Loan, exceeded the extent of its authority as an agent of its principals, including Gulf Stream, when it permitted the Debtors to file the October 2008 Amendment.

**AS AN EIGHTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

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

**AS A NINTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

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

**AS A TENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

Gulf Stream was a secured party and had a perfected security interest on the Petition Date in certain assets of the Debtors pursuant to the Term Loan Agreement as set forth in multiple UCC-1 financing statements filed throughout the United States, including, but not limited to the UCC-1 financing statement numbered 6416822 3 and filed on November 30, 2006 with the Secretary of State of Delaware listing Saturn Corporation as the "debtor" as well as multiple state fixture filings.

**AS AN ELEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

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

**AS A TWELFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

Pursuant to Bankruptcy Code section 547(c)(2), the alleged transfers sought from Gulf Stream in the Amended Complaint were (a) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and Gulf Stream, (b) made in the ordinary course of business or financial affairs of the Debtors and Gulf Stream, and (c) made according to ordinary business terms.

**AS A THIRTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The claims asserted in the Amended Complaint against Gulf Stream are barred by the doctrine of earmarking.

**AS A FOURTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The claims asserted in the Amended Complaint against Gulf Stream are barred by the doctrines of recoupment and/or set-off.

**AS A FIFTHTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The claims asserted in the Amended Complaint against Gulf Stream are barred, in whole or in part, by applicable statutes of limitations.

**AS A SIXTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The claims asserted in the Amended Complaint against Gulf Stream are barred to the extent that Gulf Stream was a mere conduit with respect to any of the alleged transfers.

**AS A SEVENTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

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

**AS A EIGHTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The claims asserted in the Amended Complaint are barred by Sections 550(a)(2) and 550(b)(1) of the Bankruptcy Code. Under those sections of the Bankruptcy Code, the Trustee may not recover from an immediate or mediate transferee of the initial transferee who takes for value, in good faith, and without knowledge of the voidability of the transfer avoided. Gulf Stream is an immediate or mediate transferee of the initial transferee and Gulf Stream took for value, in good faith, and without knowledge of the voidability of the transfer avoided.

**AS A NINETEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

Gulf Stream was not properly served with the summons and complaint, nor served with the summons and complaint within the period of time prescribed by law, and the

Trustee's claims against Gulf Stream should therefore be dismissed for insufficient service of process.

AS A TWENTIETH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

The claims asserted in the Amended Complaint are barred, in whole or in part, by the single satisfaction rule set forth in Section 550(d) of the Bankruptcy Code.

AS AN TWENTY-FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

The claims asserted in the Amended Complaint against Gulf Stream are barred by the doctrines of laches and equitable estoppel.

AS A TWENTY-SECOND AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

The Plaintiff is estopped from bringing the claims asserted in the Amended Complaint against Gulf Stream.

AS A TWENTY-THIRD AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

The claims asserted in the Amended Complaint against Gulf Stream are barred by the doctrine of mistake.

AS A TWENTY-FOURTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

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

**AS A TWENTY-FIFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

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

**AS A TWENTY-SIXTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

Pursuant to the Term Loan Agreement, the Debtors agreed to hold harmless and indemnify each Term Lender to the full extent of any losses, expenses, claims, or proceedings related to or arising out of the Term Loan Agreement. Gulf Stream hereby invokes all of its contractual and common law indemnity rights, and hereby provides notice to the Plaintiff and the Debtors thereof.

**AS A TWENTY-SEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF
ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM
DEFENDANTS ALLEGE:**

The claims asserted in the Amended Complaint against Gulf Stream to avoid transfers under 11 U.S.C. § 549 are barred insofar as such transfers were not of property of the Debtors' estates.

**AS A TWENTY-EIGHTH AFFIRMATIVE DEFENSE TO THE CAUSES OF
ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM
DEFENDANTS ALLEGE:**

The Gulf Stream Defendants are not subject to the Bankruptcy Court's jurisdiction. The claims asserted against Gulf Stream in the Amended Complaint should accordingly be dismissed.

AS A TWENTY-NINTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

The Plaintiff has not met its burden to overcome the presumption that the Bankruptcy Code's avoidance provisions should not be applied extraterritorially. The claims asserted in the Amended Complaint against Gulf Stream are barred to the extent that they require the Bankruptcy Court to apply sections of the Bankruptcy Code extraterritorially.

AS A THIRTIETH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

The claims asserted in the Amended Complaint against Gulf Stream are barred to the extent that extraterritorial application of the Bankruptcy Code is precluded by concerns of international comity.

AS A THIRTY-FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

The Court lacks jurisdiction over the final adjudication of the claims asserted in the Amended Complaint since the Gulf Stream Defendants do not consent to the entry of a final order and judgment by the Bankruptcy Court. The Gulf Stream Defendants hereby demand, pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure, a trial by jury of all issues raised in the above-captioned adversary proceeding.

AS A THIRTY-SECOND AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS ALLEGE:

Even if the Plaintiff is entitled to the return of some or all of the transfers, it is not

entitled to interest from the date of each alleged transfer.

**AS A THIRTY-THIRD AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

At the time any of the purported preferential transfers referenced in the Amended Complaint were allegedly made by the Debtors, the Gulf Stream Defendants did not receive more than they would have received had the Debtors' bankruptcy cases been cases under chapter 7 of the Bankruptcy Code, had such transfers not been made, and had the Gulf Stream Defendants received payment therein to the extent provided in the provisions of the Bankruptcy Code.

**AS A THIRTY-FOURTH AFFIRMATIVE DEFENSE TO THE CAUSES OF
ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM
DEFENDANTS ALLEGE:**

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

**AS A THIRTY-FIFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The claims asserted in the Amended Complaint against the Gulf Stream Defendants are barred by the doctrines of mistake, restitution, and unjust enrichment.

**AS A THIRTY-SIXTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

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

**AS A THIRTY-SEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF
ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM
DEFENDANTS ALLEGE:**

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

**AS A THIRTY-EIGHTH AFFIRMATIVE DEFENSE TO THE CAUSES OF
ACTION ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM
DEFENDANTS ALLEGE:**

The Gulf Stream Defendants asserts as an affirmative defense that to the extent that any prepetition transfers at issue are held by this Court to meet the requirements of 11 U.S.C. § 547(b), all such transfers may nevertheless not be avoided as preferences pursuant to 11 U.S.C. § 547(c)(1).

**AS A THIRTY-NINTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

The Gulf Stream Defendants asserts as an affirmative defense that to the extent that any prepetition transfers at issue are held by this Court to meet the requirements of 11 U.S.C. § 547(b), all such transfers may nevertheless not be avoided as preferences pursuant to 11 U.S.C. § 547(c)(4).

**AS A FOURTIETH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

Gulf Stream hereby adopts and incorporates by reference any and all other defenses asserted or to be asserted by any other defendants named in the Amended Complaint to the extent that such defenses are available to Gulf Stream.

**AS A FORTY-FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
ALLEGED BY PLAINTIFF HEREIN, THE GULF STREAM DEFENDANTS
ALLEGE:**

Gulf Stream hereby asserts all defenses available under federal law and under any applicable state law. Additional facts may be revealed in discovery or otherwise that support additional defenses presently available, but unknown, to Gulf Stream. Gulf Stream therefore reserves its right to assert additional defenses in the event discovery or investigation reveals additional defenses or such additional defenses become apparent at trial.

WHEREFORE, Gulf Stream respectfully requests that judgment be entered in its favor as follows:

- A. Dismissing with prejudice and on the merits all claims against Gulf Stream in Plaintiff's Amended Complaint;
- B. Awarding Gulf Stream its costs of defending this action, including reasonable attorneys' fees, costs and disbursements; and
- C. Awarding to Gulf Stream such other and further relief as this Court may deem just and proper.

Dated: New York, New York
June 14, 2016

HAHN & HESSEN LLP

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