HEARING DATE AND TIME: September 24, 2010 at 9:45 a.m. (Eastern Time)
OBJECTION DEADLINE: September 17, 2010 at 4:00 p.m. (Eastern Time)

KING & SPALDING
1185 Avenue of the Americas
New York, New York 10036
Telephone: (212) 556-2100
Facsimile: (212) 556-2222
Arthur Steinberg
Scott Davidson

ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330
Gregory R. Oxford

Attorneys for General Motors LLC

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)**

MOTION OF GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE 363 SALE ORDER AND APPROVED DEFERRED TERMINATION (WIND-DOWN) AGREEMENT

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

General Motors LLC f/k/a General Motors Company ("**New GM**") respectfully represents:

Requested Relief

1. After notice and a comprehensive, three day evidentiary hearing, on July 5, 2009, this Court entered that certain Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (iii) Granting Related Relief (the "**363 Sale Order**"). The 363 Sale Order, *inter alia*, authorized and approved that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (the "**MSPA**"), by and among General Motors Corporation, n/k/a Motors Liquidation Company and certain of its affiliates (collectively, the "**Debtor**") and General Motors LLC f/n/a General Motors Company, f/k/a NGMCO, Inc. ("**New GM**"). Pursuant to the MSPA and the 363 Sale Order, New GM, on July 10, 2009, purchased substantially all of the assets of the Debtor free and clear of the Debtor's liabilities, except as expressly assumed by New GM under the MSPA.

2. As part of the transactions approved by the 363 Sale Order, the Debtor entered into and assigned to New GM certain Wind-Down and other Deferred Termination Agreements between the Debtor and certain of its authorized new motor vehicle dealers. The Debtor offered these agreements to dealers as an alternative to outright rejection of their General Motors Dealer Sales and Service Agreements ("**Dealer Agreements**") under section 365 of the Bankruptcy Code. These agreements provided, among other things, that in exchange for certain

payments and other consideration, the dealers' Dealer Agreements would terminate no later than October 31, 2010.

3. This Court, over objection by the Greater New York Automobile Dealers Association, approved the Wind-Down and other Deferred Termination Agreements and specifically found in Paragraph 31 of the 363 Sale Order that these agreement "represent[ed] valid and binding contracts, enforceable in accordance with their terms." This Court further retained exclusive jurisdiction to enforce and implement these agreements. As stated in paragraph 71 of the 363 Sale Order:

> This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA [MSPA], … and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to … (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements.

In Recital JJ of the Sale Approval Order, the term "Deferred Termination Agreements" is defined to include "Wind-Down Agreements." Consistent with these provisions, the form of Wind-Down Agreement approved by the Court provides as follows in section 13:

> Continuing Jurisdiction. By executing this Agreement, Dealer hereby consents and agrees that the Bankruptcy Court shall retain, full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this Agreement and any other matter related thereto. The terms of this Section 13 shall survive the termination of this Agreement.

Thus, to the extent that a Dealer asserts any claim that it is not required to comply with its obligations under the Wind-Down Agreement, including but not limited to sections 2(a), 5(d) and 7(a) of the Wind-Down Agreement, it must assert that claim in this Court, and not elsewhere.

4. By this Motion, as described more particularly below, New GM seeks to enforce the Wind-Down Agreement against Rally Auto Group, Inc. ("**Rally**"), a wind-down dealer located in Palmdale, California, which has asserted in an action filed in the United States District Court for the Central District of California, Southern Division (the "**California Action**"), that it is not required to comply with its obligation under Section 2(a) of its Wind-Down Agreement to terminate its Chevrolet Dealer Agreement by no later than October 31, 2010. Rally further has taken certain steps in violation of section 7(a) of the Wind-Down Agreement, including instigation of litigation by the City of Palmdale, to prevent, delay and interfere with New GM's attempt to establish a new Chevrolet dealership in the Antelope Valley area. This location is very important to New GM. It includes the cities of Palmdale and Lancaster, about 35 miles north of Los Angeles, and has more than 400,000 residents.

5. Because Rally is refusing to abide by the 363 Sale Order and the Court-approved Wind-Down Agreement, New GM requests the entry of an order pursuant to sections 105 and 363 of the Bankruptcy Code: (a) enforcing the 363 Sale Order and the terms of the Wind-Down Agreement, including but not limited to sections 2(a) (termination of the Chevrolet Dealer Agreement by October 31, 2010), 5(d) (covenant not to sue New GM), 7(a) (no protest by Rally regarding establishment of new dealer) and 13 (exclusive jurisdiction of the Bankruptcy Court) thereof, and directing Rally to specifically perform its obligations thereunder pursuant to, *inter alia*, sections 5(d) and 17 thereof; (b) directing Rally and all persons acting in concert with it to cease and desist (1) from further prosecuting, or otherwise pursuing the claims asserted in, the California Action against New GM, (2) from attempting to prevent, delay or interfere with New GM's establishment of a new Chevrolet dealership in the area previously served by Rally and (3) from attempting to aid or assist the City of Palmdale and others in attempting to prevent,

delay or interfere with New GM's establishment of the new dealership; (c) directing Rally to dismiss the California Action with prejudice forthwith; and (d) granting such other relief as may be mandated by, among other things, section 5(e) of the Wind-Down Agreement (the indemnification provision).

Jurisdiction

6. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334, Paragraph 71 of the 363 Sale Order, and Article IX, Section 9.13 of the MSPA, as well as section 13 of the Wind-Down Agreement approved by the Court. Specifically, the 363 Sale Order states that:

> This Court retains *exclusive jurisdiction to enforce and implement the terms and provisions of this Order*, the M[S]PA, . . . and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to . . . (f) *resolve any disputes with respect to or concerning the Deferred Termination Agreements.*

363 Sale Order, ¶ 71 (emphasis added).

7. Section 9.13 of the MSPA provides:

> *Section 9.13 Venue and Retention of Jurisdiction.* Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein) . . . .

8. Section 13 of the Wind-Down Agreement provides:

> Continuing Jurisdiction. By executing this Agreement, Dealer hereby consents and agrees that the Bankruptcy Court shall retain, full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this Agreement and

any other matter related thereto. The terms of this Section 13 shall survive the termination of this Agreement.

9. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Factual Background

A. The Sale of Assets to New GM Pursuant to Section 363 of the Bankruptcy Code

10. On June 26, 2009, the Debtor entered into the MSPA with New GM. On July 5, 2009, the Court entered the 363 Sale Order, and on July 10, 2009, the Debtor consummated the sale of substantially all of its assets pursuant thereto to New GM (the "**363 Sale**").

11. Paragraph 31 of the 363 Sale Order specifically approved the form of Wind-Down Agreement that Rally executed and now is attempting to repudiate in the California Action, and found that it is valid and enforceable in accordance with its terms.

B. The Wind Down of Rally and GM's Attempt To Establish a New Chevrolet Dealership

12. At the time the Debtor filed for bankruptcy, Rally operated authorized Chevrolet, Buick, Cadillac, GMC Truck and Pontiac dealerships at two dealership facilities located in the Antelope Valley Auto Mall in Palmdale, California pursuant to separate General Motors Dealer Sales and Service Agreements ("**Rally Dealer Agreements**") for these vehicle lines. Rally's new vehicle sales performance had been exceedingly poor for more than ten years, and the Debtor accordingly decided not to retain Rally as an authorized GM dealership. The Debtor as an alternative to outright rejection of the various Rally Dealer Agreements offered Rally a Wind-Down Agreement which Rally accepted, executed and returned to the Debtor in June 2009. Under this agreement, a true and correct copy of which is attached hereto as Exhibit

A, Rally agreed among other things to terminate its Dealer Agreements for the surviving GM vehicle lines (Chevrolet, Buick, Cadillac and GMC) no later than October 31, 2010. The Rally Dealer Agreements and the Wind-Down Agreement between the Debtor and Rally were assigned to New GM as part of the 363 Sale.

13. Anticipating the termination of the Rally Dealer Agreements, New GM in late 2009 decided to appoint a new Chevrolet dealer in the Antelope Valley and selected a candidate, Mr. Juan Lou Gonzales, to establish the new dealership. Mr. Gonzales had operated a very successful Saturn dealership in the same Auto Mall as Rally and was losing his dealership as the result of New GM's discontinuation of the Saturn line of vehicles.

C. GM-Rally Arbitration Under the Dealer Arbitration Act

14. In December 2009, after New GM had selected Mr. Gonzales to establish the new Chevrolet dealership, Congress passed and the President signed into law the Consolidated Appropriations Act 2010, Pub. Law 111-117, 123 Stat. 3034 (2009), which in section 747 (the "**Dealer Arbitration Act**") gave "wind-down" dealers such as Rally the opportunity to seek reinstatement to the GM dealer network through binding arbitration which was to be conducted and completed no later than July 14, 2010. For the Court's convenience, a copy of the Dealer Arbitration Act is attached hereto as Exhibit B.

15. Rally filed a timely demand for arbitration in accordance with the provisions of the Dealer Arbitration Act and an arbitration hearing was held on May 13, 14 and 17, 2010 before arbitrator Richard Mainland. On June 8, 2010, the arbitrator issued an award directing New GM to reinstate Rally's Buick, Cadillac and GMC Dealer Agreements but ordering that Rally's Chevrolet Dealer Agreement not be reinstated. A true and correct copy of the arbitrator's award is attached hereto as Exhibit C. As a result of this award, the Wind-Down Agreement between New GM and Rally remains in effect as to Rally's Chevrolet Dealer

Agreement and, pursuant to section 2(a) of the Wind-Down Agreement, Rally's Chevrolet Dealer Agreement must terminate no later than October 31, 2010.

D. Ignoring This Court's Exclusive Jurisdiction, Rally Files the California Action

16. As noted above, the Dealer Arbitration Act provided for binding arbitration and the completion of all proceedings under the Dealer Arbitration Act no later than July 14, 2010. There is no statutory authority either in the Dealer Arbitration Act or elsewhere in federal law for judicial review of awards issued under the Dealer Arbitration Act. This is completely consistent with the manifest intent of Congress that the arbitration proceedings be binding and that they be completed within a very short period of time, *i.e.*, that awards not be subject to drawn out court proceedings and appeals. In contrast, the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("**FAA**"), does contain provisions permitting very limited judicial review of awards issued in contractual arbitration proceedings. *See* 9 U.S.C. §§ 10, 11. But the Dealer Arbitration Act does not refer to the FAA at all, let alone incorporate its provisions authorizing limited judicial review. The FAA, by its terms, has no application to this matter. It governs only *contractual* arbitration. *See* 9 U.S.C. § 2 ("A *written provision in … a contract* evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract…, or the refusal to perform the whole or any part thereof, *or an agreement in writing to submit to arbitration* an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract") (emphasis added). Thus, the provisions of the FAA which authorize limited judicial review of arbitration awards (9 U.S.C. §§ 10 and 11) *only* apply to the contractual arbitration awards described in FAA section 2. Those provisions do not apply to arbitration under the Dealer Arbitration Act because the obligation of

"covered manufacturers" to arbitrate with "covered dealerships" did not have its source in any contract or written agreement but instead was imposed by Congress.

17. Despite the lack of any provision for judicial review of arbitration awards issued under the Dealer Arbitration Act, and despite Paragraph 71 of the 363 Sale Order and section 13 of the Wind-Down Agreement which give this Court exclusive jurisdiction of any dispute concerning the Wind-Down Agreement, Rally, on August 13, 2010, filed the California Action seeking to vacate or modify the arbitration award and prevent termination of its Chevrolet Dealer Agreement as required by paragraph 2(a) of the Wind-Down Agreement. A true and correct copy of Rally's "Petition To Modify or, Alternatively, Vacate Arbitration Award" (the "**Petition**") in the California Action is attached hereto as Exhibit D.

18. Because federal law does not authorize judicial review of arbitration awards issued under the Dealer Arbitration Act, the California Action in reality is nothing more than an attempt to nullify, and constitutes an improper collateral attack upon, the provisions of the 363 Sale Order that approved the Wind-Down Agreement. Rally should, therefore, be required to dismiss the California Action, with prejudice.

19. Alternatively, even if judicial review of the arbitration award is somehow available, Rally may not "end run" around this Court; such judicial review must be done by this Court. Pursuant to the 363 Sale Order and the Wind-Down Agreement, this Court has "retained *exclusive* jurisdiction" to enforce and implement the terms of the 363 Sale Order and the Wind-Down Agreement, and resolve any disputes concerning these Court-approved documents. 363 Sale Order, ¶ 71 (emphasis added); *see* Wind-Down Agreement, § 13.

E. Rally's Apparent Efforts to Thwart Appointment of a Replacement Dealer

20. Mr. Gonzales' original proposal to establish a new Chevrolet dealership in Palmdale, California provided that he would utilize the existing Saturn facility, augmented through the acquisition of adjacent vacant land owned by the City of Palmdale. The City of Palmdale refused to sell him the vacant lot in the Auto Mall which he planned to use for construction of the permanent Chevrolet dealership on acceptable terms and refused to allow him to use the service bays at a local Nissan dealership on a temporary basis during construction. Instead, the City encouraged Mr. Gonzales to negotiate with Larry Mayle, the owner and dealer-operator of Rally, to lease one of Rally's two dealership facilities, which will soon be vacant. Mr. Gonzales, however, was unable to negotiate a satisfactory lease with Mr. Mayle, who demanded excessive rent.

21. In the meantime, Mr. Mayle and his counsel repeatedly requested New GM and its counsel to rescind the Wind-Down Agreement and reinstate Rally's Chevrolet Dealer Agreement, arguing among other things that Mr. Gonzales did not have the money or dealership site to successfully establish the new Chevrolet dealership. Eventually Mr. Gonzales reached an agreement with the City of Lancaster, a larger municipality adjacent to Palmdale, to establish the new Chevrolet dealership in the City of Lancaster utilizing a vacant former Toyota dealership. Mr. Mayle promptly communicated with New GM, asking that it reject the Gonzales proposal and reinstate Rally's Chevrolet Dealer Agreement on the grounds, *inter alia*, that implementation of the plan to locate the new Chevrolet Dealership would result in litigation between the City of Palmdale and the City of Lancaster.

22. As "predicted" by Mr. Mayle, after New GM declined to abandon the Gonzales proposal for the new Chevrolet dealership, the City of Palmdale, supported by an

affidavit from Mr. Mayle, filed suit against the City of Lancaster in the Superior Court of the State of California for the County of Los Angeles claiming that the terms of the agreement between Lancaster and Mr. Gonzales violated a state law that prevents cities from engaging in "bidding wars" to lure automobile dealers and other large sales tax generating businesses to "relocate" from one city to another. According to Palmdale, Mr. Gonzales' closing of his defunct Saturn dealership in Palmdale and establishment of a brand new Chevrolet dealership in Lancaster constituted a "relocation" of his Saturn dealership in violation of this state law. A copy of the City of Palmdale's Complaint is attached as Exhibit E.

23. Although New GM does **not** contend that this Court has jurisdiction over the claims asserted by the City of Palmdale, on information and belief those claims were asserted at the instigation of Rally for the purpose of avoiding its obligations under the Wind-Down Agreement. Such actions are in direct violation of section 7 of the Wind-Down Agreement.

The Requested Relief Should Be Approved By the Court

24. Rally's California Action and efforts to thwart appointment of Mr. Gonzales as Dealer-Operator of a new Chevrolet dealership in the Antelope Valley directly violate and contravene the 363 Sale Order, as well as sections 2(a), 5(d), 7(a) and 13 (the exclusive jurisdiction provision) of the Wind-Down Agreement. Specifically, section 2(a) of the Wind-Down Agreement provides in relevant part:

> 2. Termination of Dealer Agreements. Subject to the terms of Section 1 above:
>
> (a) Dealer hereby covenants and agrees to conduct the Subject Dealership Operations until the effective date of termination of the Dealer Agreements, which shall not occur earlier than January 1,2010 or later than October 31,2010, under and in accordance with the terms of the Dealer Agreements, as supplemented by the terms of this Agreement. Accordingly, Dealer hereby terminates the Dealer Agreements by written agreement in accordance with Section 14.2 thereof, such termination to be effective on October

> 31, 2010. Notwithstanding the foregoing, either party may, at its option, elect to cause the effective date of termination of the Dealer Agreements to occur (if not terminated earlier as provided herein) on any date after December 31, 2009, and prior to October 31, 2010, upon thirty (30) days written notice to the other party. In addition, and notwithstanding the foregoing, if Dealer has sold of all of its new Motor Vehicle inventory on or before December 31, 2009 and wishes to terminate the Dealer Agreements prior to January 1,2010, Dealer may request that OM or the 363 Acquirer, as applicable, approve such termination and, absent other limiting circumstances, OM or the 363 Acquirer, as applicable, shall not unreasonably withhold its consent to such termination request, subject to the terms of this Agreement.

25. Section 5(d) of the Wind-Down Agreement provides in relevant part:

> Dealer, for itself, and the other Dealer Parties, hereby agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert (i) any Claim that is covered by the release provision in subparagraph (a) above or (ii) any claim that is based upon, related to, arising from, or otherwise connected with the assignment of the Dealer Agreements or this Agreement by GM to the 363 Acquirer in the 363 Sale, if any, or an allegation that such assignment is void, voidable, otherwise unenforceable, violates any applicable law or contravenes any agreement. As a result of the foregoing, any such breach shall absolutely entitle GM or the 363 Acquirer, as applicable, to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's, as applicable, application for injunctive relief and prohibiting any further act by Dealer in violation of this Section 7. In addition, GM or the 363 Acquirer, as applicable, shall have all other equitable rights in connection with a breach of this Section 7 by Dealer, including, without limitation, the right to specific performance.

26. Moreover, section 7(a) of the Wind-Down Agreement provides that Rally

> covenants and agrees that it will not commence, maintain, or prosecute, or assist in the prosecution of any action … whether federal, state, or otherwise, to challenge, protest, prevent, impede, or delay, directly or indirectly, any establishment or relocation whatsoever of motor vehicle dealerships for any of the [surviving GM] Model Lines.

27. Under these circumstances, the Court should enforce the terms of the 363 Sale Order by ordering Rally to specifically perform all of its obligations under the Wind-Down Agreement (including, but not limited to sections 2(a), 5(d) and 7(a) thereof), and direct Rally to promptly dismiss the California Action with prejudice, cease and desist from all efforts to assert the claims attempted to be asserted in the California Action, and cease and desist from taking any action or attempting in any way to avoid the terms of the Wind-Down Agreement, including any effort to prevent, delay or interfere with establishment of the new Chevrolet dealership, or to aid or assist the City of Palmdale or anyone else in attempting to prevent, delay or interfere with establishment of the new Chevrolet dealership, in Lancaster or elsewhere.

28. Bankruptcy Courts have the inherent authority to enforce their orders: "[a]ll courts, whether created pursuant to Article I or Article III, have inherent contempt power to enforce compliance with their lawful orders. The duty of any court to hear and resolve legal disputes carries with it the power to enforce the order." U.S. Lines, Inc. v. GAC Marine Fuels, Ltd. (In re McClean Indus., Inc.), 68 B.R. 690, 695 (Bankr. S.D.N.Y. 1986) (Buschman, J.). Section 105 of the Bankruptcy Code also provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out" the Bankruptcy Code's provisions and this section "codif[ies] the bankruptcy court's inherent power to enforce its own orders." Back v. AM Gen. Corp. (In re Chateaugay Corp.), 213 B.R. 633, 640 (S.D.N.Y. 1997) (Lifland, J.); 11 U.S.C. § 105(a).

29. More specifically, this Court retains subject matter jurisdiction to enforce the 363 Sale Order, as it "is axiomatic that a court possesses the inherent authority to enforce its own orders" and agreements approved by the court. In re Cont'l Airlines, Inc., 236 B.R. 318, 326 (Bankr. D. Del. 1999) ("In the bankruptcy context, courts have specifically, and consistently,

held that the bankruptcy court retains jurisdiction, *inter alia*, to enforce its confirmation order."), *aff'd*, No. 09-932, Adv. 99-47, Civ. A. 99-795-SLR, 2000 WL 1425751 (D. Del. Sep. 12, 2000), *aff'd*, 279 F.3d 226 (3d Cir. 2002), *cert. denied*, 537 U.S. 944 (2002); Travelers Indemn. Co. v. Bailey, 129 S. Ct. 2195, 2205 (2009) ("as the Second Circuit recognized, . . . the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders."), *on remand to*, ___F.3d ___, 2010 WL 1007932 (2d Cir. March 22, 2010).

30. Additionally, pursuant to Paragraph 71 of the 363 Sale Order, Section 9.13 of the MSPA, and section 13 of the Wind-Down Agreement, this Court retained exclusive jurisdiction "to enforce and implement the terms and provisions of this [363 Sale] Order, the M[S]PA, … and … the Deferred Termination Agreements." *See* 363 Sale Order ¶ 71; MSPA Art. IX, § 9.13.

31. As plainly demonstrated above, the MSPA and 363 Sale Order specifically shield New GM from any claim that its Wind-Down Agreement with Rally is not valid and enforceable according to its terms. Under these incontrovertible facts and circumstances, the relief requested in this Motion clearly is appropriate.

32. New GM has suffered harm by reason of the California Action. New GM has been forced to incur unwarranted costs and expenses and has had to deal with the distraction and imposition of baseless litigation. In view of the clear provisions of the 363 Sale Order and Court-approved Wind-Down Agreement, New GM should not be under any obligation to defend itself and its rights in the Central District of California. Rather, this Court should enforce the terms and provisions of the 363 Sale Order and Court-approved Wind-Down Agreement, and direct Rally to dismiss the California Action against New GM, with prejudice, forthwith.

33. Even aside from this indisputable harm, settled law holds that when a party unilaterally violates a Bankruptcy Court order, that violation, standing alone, constitutes the only harm necessary for a new order specifically enforcing the prior order. *See, e.g.*, Balanoff v. Glazier (In re Steffan), 97 B.R. 741, 746 (Bankr. N.D.N.Y. 1989) (Gerling, J.) (noting that "the usual equitable grounds for relief, such as irreparable damage, need not be shown" in injunctions in bankruptcy cases) (quotation omitted).

34. As noted above, prior to filing this Motion, New GM requested in writing that Rally comply with this Court's 363 Sale Order and dismiss the California Action. A copy of New GM's counsel's letter making this request is attached hereto as Exhibit F. In a letter from its counsel, Rally refused to do so and even threatened to seek Rule 11 sanctions based on GM counsel's stated intent to seek enforcement of the 363 Sale Order and Wind-Down Agreement. A copy of Rally's counsel's letter is attached hereto as Exhibit G. Accordingly, as provided in section 5(e) of the Wind-Down Agreement, New GM is entitled to indemnification from Rally for its costs and reasonable attorney's fees based on Rally's knowing violation of the 363 Sale Order and Court-approved Wind-Down Agreement, including the full amount of all costs and fees incurred in connection with the filing of this Motion and continued defense of the California Action.

35. New GM proposes to establish its damages at a separate inquest hearing that New GM will request.

Notice

36. Notice of this Motion has been provided (a) to counsel for Rally and (b) parties in interest in accordance with the Fourth Amended Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management

Procedures, dated August 24, 2010 [Docket No. 6750]. New GM submits that such notice is sufficient and no other or further notice need be provided.

37. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, New GM respectfully requests that this Court: (i) enter an order substantially in the form attached hereto as Exhibit H, granting the relief sought herein; and (ii) grant New GM such other and further relief as the Court may deem proper.

Dated: September 10, 2010
New York, New York

Respectfully submitted,

/s/ Arthur Steinberg
Arthur Steinberg
Scott Davidson
KING & SPALDING LLP
1185 Avenue of the Americas
New York, New York 10036
Telephone: (212) 556-2100
Facsimile: (212) 556-2222

Gregory R. Oxford
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for General Motors LLC
f/k/a General Motors Company

EXHIBIT A

Palmdale, CA

WIND-DOWN AGREEMENT

THIS WIND-DOWN AGREEMENT (this "Agreement") is made and entered into as of the 1st day of June, 2009, by and between Rally Auto Group, Inc. ("Dealer"), and GENERAL MOTORS CORPORATION ("GM").

RECITALS

A. Dealer and GM are the parties to Dealer Sales and Service Agreements (the "Dealer Agreements") for Chevrolet, Pontiac, Buick, Cadillac, GMC Truck motor vehicles (the "Existing Model Lines"). Capitalized terms not otherwise defined in this Agreement shall have the definitions set forth for such terms in the Dealer Agreements.

B. GM is the debtor and debtor-in-possession in a bankruptcy case (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), having filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). No trustee has been appointed and GM is operating its business as debtor-in-possession.

C. GM intends to sell, convey, assign and otherwise transfer certain of its assets (the "363 Assets") to a purchaser (the "363 Acquirer") pursuant to Section 363 of the Bankruptcy Code (the "363 Sale"), subject to approval by and order of the Bankruptcy Court.

D. GM has considered moving and may, at its option, move to reject the Dealer Agreements in the Bankruptcy Case, as permitted under the Bankruptcy Code, unless Dealer executes and delivers this Agreement to GM on or before June 12, 2009.

E. In return for the payments set forth herein and GM's willingness not to pursue the immediate rejection of the Dealer Agreements in the Bankruptcy Case, Dealer desires to enter into this Agreement (i) to allow Dealer, among other things, to wind down its Dealership Operations in an orderly fashion (specifically including the sale of all of Dealer's new Motor Vehicles), (ii) to provide for Dealer's voluntary termination of the Dealer Agreements, GM's payment of certain monetary consideration to Dealer, and Dealer's covenants regarding its continuing Dealership Operations under the Dealer Agreements, as supplemented by the terms of this Agreement (the "Subject Dealership Operations"), and (iii) to provide for Dealer's release of GM, the 363 Acquirer and their related parties from any and all liability arising out of or connected with the Dealer Agreements, any predecessor agreement(s) thereto, and the relationship between GM and Dealer relating to the Dealer Agreements, and any predecessor agreement(s) thereto, all on the terms and conditions set forth herein.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing recitals and the premises and covenants contained herein, Dealer and GM hereby agree (subject to any required Bankruptcy Court approvals) as follows:

1. Assignment-363 Sale. Dealer acknowledges and agrees that GM has the right, but not the obligation, to seek to assign the Dealer Agreements and this Agreement in the Bankruptcy Case to the 363 Acquirer. As part of the 363 Sale, provided such sale closes, GM may, in its sole discretion, assign the Dealer Agreements and this Agreement to the 363 Acquirer. If GM elects to exercise its option to assign the Dealer Agreements and this Agreement, Dealer specifically agrees to such assignment and agrees not to object to or protest any such assignment.

2. Termination of Dealer Agreements. Subject to the terms of Section 1 above:

(a) Dealer hereby covenants and agrees to conduct the Subject Dealership Operations until the effective date of termination of the Dealer Agreements, which shall not occur earlier than January 1, 2010 or later than October 31, 2010, under and in accordance with the terms of the Dealer Agreements, as supplemented by the terms of this Agreement. Accordingly, Dealer hereby terminates the Dealer Agreements by written agreement in accordance with Section 14.2 thereof, such termination to be effective on October 31, 2010. Notwithstanding the foregoing, either party may, at its option, elect to cause the effective date of termination of the Dealer Agreements to occur (if not terminated earlier as provided herein) on any date after December 31, 2009, and prior to October 31, 2010, upon thirty (30) days written notice to the other party. In addition, and notwithstanding the foregoing, if Dealer has sold of all of its new Motor Vehicle inventory on or before December 31, 2009 and wishes to terminate the Dealer Agreements prior to January 1, 2010, Dealer may request that GM or the 363 Acquirer, as applicable, approve such termination and, absent other limiting circumstances, GM or the 363 Acquirer, as applicable, shall not unreasonably withhold its consent to such termination request, subject to the terms of this Agreement.

(b) Concurrently with its termination of the Dealer Agreements, Dealer hereby conveys to GM or the 363 Acquirer, as applicable, a non-exclusive right to use Dealer's customer lists and service records for the Subject Dealership Operations, and within ten (10) days following GM's or the 363 Acquirer's, as applicable, written request, Dealer shall deliver to GM or the 363 Acquirer, as applicable, digital computer files containing copies of such lists and records. Such right of use shall include without limitation the right to communicate with and solicit business and information from customers identified in such lists and records and to assign such non-exclusive right to third parties without thereby relinquishing its own right of use.

3. Payment to Dealer.

(a) Subject to Sections 1 and 2 above, in consideration of (i) Dealer's execution and delivery to GM of this Agreement, (ii) Dealer's agreement to sell its new Motor Vehicle inventory as set forth below, and (iii) the termination of the Dealer Agreements by written agreement in accordance with Section 14.2 thereof (as set forth in Section 2 of this Agreement), GM or the 363 Acquirer, as applicable, shall pay, or cause to be paid, to Dealer the sum of $1,059,953 (the "Wind-Down Payment Amount"), subject to the terms herein. This payment is consideration solely for Dealer's covenants, releases and waivers set forth herein, and Dealer's transfer to GM or the 363 Acquirer, as applicable, of a non-exclusive right to use the customer lists and service records.

(b) GM shall pay twenty-five percent (25%) of the Wind-Down Payment Amount (the "Initial Payment Amount") to Dealer by crediting Dealer's open account maintained by GM on the GM Dealer Payment System (the "Open Account"), in accordance with GM's standard practices, within ten (10) business days following the later of (i) GM's receipt of any required Bankruptcy Court approvals, or (ii) full execution and delivery of this Agreement. GM or the 363 Acquirer, as applicable, shall pay the balance of the Wind-Down Payment Amount (the "Final Payment Amount") to Dealer, subject to the terms of this Agreement, by crediting Dealer's Open Account in accordance with its standard practices, within ten (10) business days after all of the following have occurred: (i) Dealer has sold all of its new Motor Vehicle inventory for the Existing Model Lines prior to the termination of the Dealer Agreements, (ii) Dealer's compliance with all applicable bulk transfer, sales tax transfer or similar laws and the expiration of all time periods provided therein, (iii) Dealer's delivery to GM or the 363 Acquirer, as applicable, of

certificates of applicable taxing authorities that Dealer has paid all sales, use, and other taxes or evidence reasonably satisfactory to GM or the 363 Acquirer, as applicable, that GM or the 363 Acquirer, as applicable, will have no liability or obligation to pay any such taxes that may remain unpaid, (iv) the effective date of termination of the Dealer Agreements in accordance with Section 2(a) above, (v) Dealer's compliance with the terms of Section 4(c) below, (vi) GM's or the 363 Acquirer's, as applicable, receipt of the fully executed Supplemental Wind-Down Agreement in substantially the form attached hereto as Exhibit A (subject to inclusion of information specific to Dealer's Dealership Operations), and (vii) GM's or the 363 Acquirer's, as applicable, receipt of any required Bankruptcy Court approvals. GM or the 363 Acquirer, as applicable, may, in its sole discretion, waive in writing any of the conditions for payment set forth in the preceding sentence.

(c) In addition to any other setoff rights under the Dealer Agreements, payment of all or any part of the Wind-Down Payment Amount may, in GM's or the 363 Acquirer's, as applicable, reasonable discretion, be (i) reduced by any amount owed by Dealer to GM or the 363 Acquirer, as applicable, or their Affiliates (as defined below), and/or (ii) delayed in the event GM or the 363 Acquirer, as applicable, has a reasonable basis to believe that any party has or claims any interest in the assets or properties of Dealer relating to the Subject Dealership Operations including, but not limited to, all or any part of the Wind-Down Payment Amount (each, a "Competing Claim"), in which event GM or the 363 Acquirer, as applicable, may delay payment of all or any part of the Wind-Down Payment Amount until GM or the 363 Acquirer, as applicable, has received evidence in form and substance reasonably acceptable to it that all Competing Claims have been fully and finally resolved.

4. Complete Waiver of All Termination Assistance Rights. In consideration of the agreements by GM hereunder, upon the termination of the Dealer Agreements, as provided in this Agreement, and cessation of the Subject Dealership Operations, the following terms shall apply in lieu of Dealer's rights to receive termination assistance, whether under the Dealer Agreements or applicable laws, all of which rights Dealer hereby waives:

(a) Neither GM nor the 363 Acquirer, as applicable, shall have any obligation to repurchase from Dealer any Motor Vehicles whatsoever.

(b) Neither GM nor the 363 Acquirer, as applicable, shall have any obligation to repurchase from Dealer any Parts or Accessories or Special Tools whatsoever.

(c) Dealer shall eliminate or remove from the Dealership Premises all Dealer-owned signs (freestanding or not) for the Subject Dealership Operations within thirty (30) days following the effective date of termination at no cost to either GM or the 363 Acquirer, as applicable. Dealer understands and agrees that neither GM nor the 363 Acquirer, as applicable, will purchase any Dealer-owned signs used in connection with the Subject Dealership Operations. Dealer hereby waives any rights it may have to require either GM or the 363 Acquirer, as applicable, to purchase any signs used or useful in connection with the Subject Dealership Operations. Dealer shall provide, or shall cause the owner of the Dealership Premises to provide, GMDI access to the Dealership Premises in order for GMDI to remove all GM signs leased to Dealer by GMDI. Dealer understands and agrees that the Wind-Down Payment Amount was determined by GM in part based on Dealer's agreement that it will timely remove all signs for the Subject Dealership Operations and will not require or attempt to require GM or the 363 Acquirer, as applicable, to purchase any or all of such signs pursuant to the provisions of the Dealer Agreements or any applicable statutes, regulations, or other laws.

(d) Dealer expressly agrees that the provisions of Article 15 of the Dealer Agreements do not, by their terms, apply to this termination.

(e) Dealer expressly agrees that all termination rights of Dealer are set forth herein and expressly agrees that any termination assistance otherwise available to Dealer as set forth in the Dealer Agreements or any state statute or regulation shall not apply to Dealer's termination of the Dealer Agreements.

(f) The terms of this Section 4 shall survive the termination of this Agreement.

5. Release; Covenant Not to Sue; Indemnity.

(a) Dealer, for itself, its Affiliates and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Dealer Parties"), hereby releases, settles, cancels, discharges, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever (specifically including any claims which are pending in any court, administrative agency or board or under the mediation process of the Dealer Agreements), whether known or unknown, foreseen or unforeseen, suspected or unsuspected ("Claims"), which Dealer or anyone claiming through or under Dealer may have as of the date of the execution of this Agreement against GM, the 363 Acquirer, their Affiliates or any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors or assigns (collectively, the "GM Parties"), arising out of or relating to (i) the Dealer Agreements or this Agreement, (ii) any predecessor agreement(s), (iii) the operation of the dealership for the Existing Model Lines, (iv) any facilities agreements, including without limitation, any claims related to or arising out of dealership facilities, locations or requirements, Standards for Excellence ("SFE") related payments or bonuses (except that GM shall pay any SFE payments due Dealer for the second (2nd) quarter of 2009 and neither GM nor the 363 Acquirer, as applicable, shall collect any further SFE related payments from Dealer for the third (3rd) quarter of 2009 or thereafter), and any representations regarding motor vehicle sales or profits associated with Dealership Operations under the Dealer Agreements, or (v) any other events, transactions, claims, discussions or circumstances of any kind arising in whole or in part prior to the effective date of this Agreement, provided, however, that the foregoing release shall not extend to (x) reimbursement to Dealer of unpaid warranty claims if the transactions giving rise to such claims occurred within ninety (90) days prior the date of this Agreement, (y) the payment to Dealer of any incentives currently owing to Dealer or any amounts currently owing to Dealer in its Open Account, or (z) any claims of Dealer pursuant to Section 17.4 of the Dealer Agreements, all of which amounts described in (x) - (z) above of this sentence shall be subject to setoff by GM or the 363 Acquirer, as applicable, of any amounts due or to become due to either or any of its Affiliates. GM or the 363 Acquirer, as applicable, shall not charge back to Dealer any warranty claims approved and paid by GM or the 363 Acquirer, as applicable, prior to the effective date of termination, as described in Section 3 above, after the later to occur of (A) the date six (6) months following payment, or (B) the effective date of termination, except that GM or the 363 Acquirer, as applicable, may make charge-backs for false, fraudulent or unsubstantiated claims within two (2) years of payment.

(b) Dealer hereby acknowledges, understands and agrees that the foregoing release extends to, and is expressly intended by Dealer to extend to, all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected. In this regard, Dealer hereby

expressly waives the benefit, if any, to Dealer of Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Dealer expressly assumes the risk that after the execution and delivery of this Agreement by Dealer, Dealer may discover facts which are different from those facts which Dealer believed to be in existence on the date hereof. Any such discovery by Dealer shall not affect the validity or effectiveness of the release contained herein.

(c) As set forth above, GM reaffirms the indemnification provisions of Section 17.4 of the Dealer Agreements and specifically agrees that such provisions apply to all new Motor Vehicles sold by Dealer.

(d) Dealer, for itself, and the other Dealer Parties, hereby agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert (i) any Claim that is covered by the release provision in subparagraph (a) above or (ii) any claim that is based upon, related to, arising from, or otherwise connected with the assignment of the Dealer Agreements or this Agreement by GM to the 363 Acquirer in the 363 Sale, if any, or an allegation that such assignment is void, voidable, otherwise unenforceable, violates any applicable law or contravenes any agreement. As a result of the foregoing, any such breach shall absolutely entitle GM or the 363 Acquirer, as applicable, to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's, as applicable, application for injunctive relief and prohibiting any further act by Dealer in violation of this Section 7. In addition, GM or the 363 Acquirer, as applicable, shall have all other equitable rights in connection with a breach of this Section 7 by Dealer, including, without limitation, the right to specific performance.

(e) Dealer shall indemnify, defend and hold the GM Parties harmless, from and against any and all claims, demands, fines, penalties, suits, causes of action, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees and costs) which may be imposed upon or incurred by the GM Parties, or any of them, arising from, relating to, or caused by Dealer's (or any other Dealer Party's) breach of this Agreement or Dealer's execution or delivery of or performance under this Agreement. "Affiliate" means, with respect to any Person (as defined below), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. "Person" means an individual, partnership, limited liability company, association, corporation or other entity. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

(f) The terms of this Section 5 shall survive the termination of this Agreement.

6. Subject Dealership Operations. From the effective date of this Agreement until the effective date of termination of the Dealer Agreements (which shall not occur prior to January 1, 2010, subject to Section 2(a) above):

(a) Dealer shall not, and shall have no right to, purchase Motor Vehicles from GM or the 363 Acquirer, as applicable, which rights Dealer hereby waives.

(b) Dealer shall have the right to purchase service parts from GM or the 363 Acquirer, as applicable, to perform warranty service and other normal service operations at the Dealership Premises during the term of this Agreement. Dealer shall have no obligation, however, to follow the recommendations of GM's service parts operations' retail inventory management ("RIM") process, which recommendations are provided for guidance purposes only. Dealer's future orders of service parts of any kind (as well as service parts currently on hand and those acquired in the future from a source other than GM or the 363 Acquirer, as applicable), including but not limited to RIM-recommended orders, shall not be eligible for return.

(c) Dealer shall not, and shall have no right to, propose to GM or the 363 Acquirer, as applicable (under Section 12.2 of the Dealer Agreements or otherwise) or consummate a change in Dealer Operator, a change in ownership, or, subject to GM's or the 363 Acquirer's, as applicable, option, a transfer of the dealership business or its principal assets to any Person; provided, however, that GM or the 363 Acquirer, as applicable, shall honor the terms of Section 12.1 of the Dealer Agreements upon the death or incapacity of the Dealer Operator, except that the term of any new Dealer Agreements under Subsection 12.1.5 shall expire on October 31, 2010, subject to the terms of this Agreement. Accordingly, neither GM nor the 363 Acquirer, as applicable, shall have any obligation (under Section 12.2 of the Dealer Agreements or otherwise) to review, process, respond to, or approve any application or proposal to accomplish any such change, except as expressly otherwise provided in the preceding sentence.

(d) In addition to all other matters set forth herein, the following portions of the Dealer Agreements shall not apply; Sections 6.1 and 6.3.1 (concerning ordering of new Motor Vehicles), Article 8 (Training), Article 9 (Review of Dealer's Performance), Sections 12.2 and 12.3 (Changes in Management and Ownership), Article 15 (Termination Assistance), and Article 16 (Dispute Resolution).

(e) Except as expressly otherwise set forth herein, the terms of the Dealer Agreements, shall remain unmodified and in full force and effect.

7. No Protest.

(a) GM or the 363 Acquirer, as applicable, may desire to relocate or establish representation for the sale and service of the Existing Model Lines in the vicinity of Dealer's Dealership Premises identified in the Dealer Agreements. In consideration provided of GM's and the 363 Acquirer's, as applicable, covenants and obligations herein, Dealer covenants and agrees that it will not commence, maintain, or prosecute, or cause, encourage, or advise to be commenced, maintained, or prosecuted, or assist in the prosecution of any action, arbitration, mediation, suit, proceeding, or claim of any kind, before any court, administrative agency, or other tribunal or dispute resolution process, whether federal, state, or otherwise, to challenge, protest, prevent, impede, or delay, directly or indirectly, any establishment or relocation whatsoever of motor vehicle dealerships for any of the Existing Model Lines.

(b) Dealer, for itself and for each and all of the other Dealer Parties,, hereby releases and forever discharges the GM Parties, from any and all past, present, and future claims, demands, rights, causes of action, judgments, executions, damages, liabilities, costs, or expenses (including, without limitation, attorneys' fees) which they or any of them have or might have or acquire, whether known or unknown, actual or contingent, which arise from, are related to, or are

associated in any way with, directly or indirectly, the establishment or relocation of any of such Existing Model Lines.

(c) Dealer hereby acknowledges, understands and agrees that the foregoing release extends to, and is expressly intended by Dealer to extend to, all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected. In this regard, Dealer hereby expressly waives the benefit, if any, to Dealer of Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Dealer expressly assumes the risk that after the execution and delivery of this Agreement by Dealer, Dealer may discover facts which are different from those facts which Dealer believed to be in existence on the date hereof. Any such discovery by Dealer shall not affect the validity or effectiveness of the release contained herein..

(d) Dealer recognizes that it may have some claim, demand, or cause of action of which it is unaware and unsuspecting which it is giving up pursuant to this Section 7. Dealer further recognizes that it may have some loss or damage now known that could have consequences or results not now known or suspected, which it is giving up pursuant to this Section 7. Dealer expressly intends that it shall be forever deprived of any such claim, demand, cause of action, loss, or damage and understands that it shall be prevented and precluded from asserting any such claim, demand, cause of action, loss, or damage.

(e) Dealer acknowledges that, upon a breach of this Section 7 by Dealer, the determination of the exact amount of damages would be difficult or impossible and would not restore GM or the 363 Acquirer, as applicable, to the same position it would occupy in the absence of breach. As a result of the foregoing, any such breach shall absolutely entitle GM or the 363 Acquirer, as applicable, to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's, as applicable, application for injunctive relief and prohibiting any further act by Dealer in violation of this Section 7. In addition, GM or the 363 Acquirer, as applicable, shall have all other equitable rights in connection with a breach of this Section 7 by Dealer, including, without limitation, the right to specific performance.

8. Due Authority. Dealer and the individual(s) executing this Agreement on behalf of Dealer hereby jointly and severally represent and warrant to GM that this Agreement has been duly authorized by Dealer and that all necessary corporate action has been taken and all necessary corporate approvals have been obtained in connection with the execution and delivery of and performance under this Agreement.

9. Confidentiality. Dealer hereby agrees that, without the prior written consent of GM or the 363 Acquirer, as applicable,, it shall not, except as required by law, disclose to any person (other than its agents or employees having a need to know such information in the conduct of their duties for Dealer, which agents or employees shall be bound by a similar undertaking of confidentiality) the terms or conditions of this Agreement or any facts relating hereto or to the underlying transactions.

10. Informed and Voluntary Acts. Dealer has reviewed this Agreement with its legal, tax, or other advisors, and is fully aware of all of its rights and alternatives. In executing this Agreement, Dealer acknowledges that its decisions and actions are entirely voluntary and free from any duress.

11. Binding Effect. This Agreement shall benefit and be binding upon the parties hereto and their respective successors or assigns. Without limiting the generality of the foregoing, after the 363 Sale occurs and provided that GM assigns the Dealer Agreements and this Agreement to the 363 Acquirer, this Agreement shall benefit and bind the 363 Acquirer.

12. Effectiveness. This Agreement shall be deemed withdrawn and shall be null and void and of no further force or effect unless this Agreement is executed fully and properly by Dealer and is received by GM on or before **June 12, 2009**.

13. Continuing Jurisdiction. By executing this Agreement, Dealer hereby consents and agrees that the Bankruptcy Court shall retain full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this Agreement and any other matter related thereto. The terms of this Section 13 shall survive the termination of this Agreement.

14. Other Agreements.

(a) Dealer shall continue to comply with all of its obligations under Channel Agreements (as defined below) between GM and Dealer, provided that GM or the 363 Acquirer, as applicable, and Dealer shall enter into any amendment or modification to the Channel Agreements required as a result of GM's restructuring plan, in a form reasonably satisfactory to GM or the 363 Acquirer, as applicable. In the event of any conflict between the terms of the Channel Agreements and this Agreement, the terms and conditions of this Agreement shall control.

(b) The term "Channel Agreements" shall mean any agreement (other than the Dealer Agreements) between GM and Dealer imposing on Dealer obligations with respect to its Dealership Operations under the Dealer Agreements, including, without limitation, obligations to relocate Dealership Operations, to construct or renovate facilities, not to protest establishment or relocation of other dealerships, to conduct exclusive Dealership Operations under the Dealer Agreements, or to meet certain sales performance standards (as a condition of receiving or retaining payments from GM or the 363 Acquirer, as applicable, or otherwise). Channel Agreements may be entitled, without limitation, "Summary Agreement," "Agreement and Business Plan," "Exclusive Use Agreement," "Performance Agreement," "No-Protest Agreement," or "Declaration of Use Restriction, Right of First Refusal, and Option to Purchase." Notwithstanding the foregoing, the term "Channel Agreement" shall not mean or refer to (i) any termination agreement of any kind with respect to the Dealer Agreements between Dealer and GM (each a "Termination Agreement"), (ii) any performance agreement of any kind between Dealer and GM (each a "Performance Agreement"), or (iii) any agreement between Dealer (or any Affiliate of Dealer) and Argonaut Holdings, Inc., a Delaware corporation and wholly-owned subsidiary of GM ("AHI"), including, without limitation, any agreement entitled "Master Lease Agreement," "Prime Lease," or "Dealership Sublease" (and Dealer shall comply with all of the terms of such agreements with AHI). Dealer acknowledges that GM shall be entitled, at its option, to move to reject any currently outstanding Termination Agreements or Performance Agreements in the Bankruptcy Case. By executing this letter agreement, Dealer agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert any objection or protest of any kind with respect to GM's rejection of such Termination Agreements or Performance Agreements.

(c) All of the Channel Agreements shall automatically terminate and be of no further force or effect on the effective date of termination of the Dealer Agreements, except that those provisions that, by their terms, expressly survive termination of the Channel Agreements shall survive the termination contemplated under this Agreement. Following the effective date of termination of the Dealer Agreements, Dealer and GM shall execute and deliver documents in recordable form reasonably satisfactory to GM or the 363 Acquirer, as applicable, confirming the termination of any Channel Agreements affecting title to real property owned or leased by Dealer or Dealer's Affiliates.

15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Michigan.

16. Counterparts. This Agreement may be executed in counterparts, each of which when signed by all of the parties hereto shall be deemed an original, but all of which when taken together shall constitute one agreement.

17. Breach. In the event of a breach of this Agreement by Dealer, GM and the 363 Acquirer shall each have all of its remedies at law and in equity, including, without limitation, the right to specific performance.

18. Complete Agreement of the Parties. This Agreement, the Dealer Agreements, and the schedules, exhibits, and attachments to such agreements (i) contain the entire understanding of the parties relating to the subject matter of this Agreement, and (ii) supersede all prior statements, representations and agreements relating to the subject matter of this Agreement. The parties represent and agree that, in entering into this Agreement, they have not relied upon any oral or written agreements, representations, statements, or promises, express or implied, not specifically set forth in this Agreement. No waiver, modification, amendment or addition to this Agreement is effective unless evidenced by a written instrument signed by an authorized representative of the parties, and each party acknowledges that no individual will be authorized to orally waive, modify, amend or expand this Agreement. The parties expressly waive application of any law, statute, or judicial decision allowing oral modifications, amendments, or additions to this Agreement notwithstanding this express provision requiring a writing signed by the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, Dealer and GM have executed this Agreement as of the day and year first above written.

Rally Auto Group, Inc.

By: _____

Name: LARRY A. MAYLE
Title: PRESIDENT

GENERAL MOTORS CORPORATION

By _____

Authorized Representative

THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009, OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN.

EXHIBIT A

SAMPLE SUPPLEMENTAL WIND-DOWN AGREEMENT

THIS SUPPLEMENTAL WIND-DOWN AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 20__, by _____, a _____ ("Dealer"), for the use and benefit of _____, a _____ ("GM") and _____, a _____ corporation ("363 Acquirer").

RECITALS

A. Dealer and GM are parties to Dealer Sales and Service Agreements for _____ motor vehicles (the "Dealer Agreements").

B. Dealer and GM are parties to that certain Wind-Down Agreement dated June __, 2009 (the "Original Wind-Down Agreement"). All initially capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Original Wind-Down Agreement.

C. **[IF DEALER AGREEMENTS ASSIGNED TO THE 363 ACQUIRER] [GM assigned all of its right, title and interest in the Dealer Agreements and the Original Wind-Down Agreement to the 363 Acquirer.]**

D. Pursuant to the Original Wind-Down Agreement, Dealer agreed to terminate the Dealer Agreements and all rights and continuing interests therein by written agreement and to release GM and its related parties from any and all liability arising out of or connected with the Dealer Agreements, any predecessor agreement(s) thereto, and the relationship between **[GM or the 363 Acquirer]** and Dealer relating to the Dealer Agreements, and any predecessor agreement(s) thereto, on the terms and conditions set forth herein, intending to be bound by the terms and conditions of this Agreement.

E. Dealer executes this Agreement in accordance with Section 3 of the Original Wind-Down Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing recitals and the premises and covenants contained herein, Dealer hereby agrees as follows:

1. Termination of Dealer Agreements.

(a) Dealer hereby terminates and cancels the Dealer Agreement by written agreement in accordance with Section 14.2 thereof. The effective date of such termination shall be _____, 20__.

(b) Dealer shall timely pay all sales taxes, other taxes and any other amounts due to creditors, arising out of the operations of Dealer.

(c) Dealer shall be entitled to receive the Final Payment Amount in accordance with the terms of the Original Wind-Down Agreement.

15 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009 OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN

2. Release; Covenant Not to Sue; Indemnity.

(a) Dealer, for itself, its Affiliates and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Dealer Parties"), hereby releases, settles, cancels, discharges, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever (specifically including any claims which are pending in any court, administrative agency or board or under the mediation process of the Dealer Agreements), whether known or unknown, foreseen or unforeseen, suspected or unsuspected ("Claims"), which Dealer or anyone claiming through or under Dealer may have as of the date of the execution of this Agreement against GM, the 363 Acquirer, their Affiliates or any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors or assigns (collectively, the "GM Parties"), arising out of or relating to (i) the Dealer Agreements or this Agreement, (ii) any predecessor agreement(s), (iii) the operation of the dealership for the Existing Model Line, (iv) any facilities agreements, including without limitation, any claims related to or arising out of dealership facilities, locations or requirements, Standards for Excellence ("SFE") related payments or bonuses (except that the 363 Acquirer shall pay any SFE payments due Dealer for the second (2nd) quarter of 2009 and the 363 Acquirer shall not collect any further SFE related payments from Dealer for the third (3rd) quarter of 2009 or thereafter), and any representations regarding motor vehicle sales or profits associated with Dealership Operations under the Dealer Agreements, or (v) any other events, transactions, claims, discussions or circumstances of any kind arising in whole or in part prior to the effective date of this Agreement, provided, however, that the foregoing release shall not extend to (x) reimbursement to Dealer of unpaid warranty claims if the transactions giving rise to such claims occurred within ninety (90) days prior the date of this Agreement, (y) the payment to Dealer of any incentives currently owing to Dealer or any amounts currently owing to Dealer in its Open Account, or (z) any claims of Dealer pursuant to Section 17.4 of the Dealer Agreements, all of which amounts described in (x) - (z) above of this sentence shall be subject to setoff by GM of any amounts due or to become due to GM or any of its Affiliates. GM shall not charge back to Dealer any warranty claims approved and paid by GM prior to the effective date of termination, as described in Section 1 above, after the later to occur of (A) the date six (6) months following payment, or (B) the effective date of termination, except that GM may make charge-backs for false, fraudulent or unsubstantiated claims within two (2) years of payment.

(b) Dealer hereby acknowledges, understands and agrees that the foregoing release extends to, and is expressly intended by Dealer to extend to, all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected. In this regard, Dealer hereby expressly waives the benefit, if any, to Dealer of Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Dealer expressly assumes the risk that after the execution and delivery of this Agreement by Dealer, Dealer may discover facts which are different from those facts which Dealer believed to

be in existence on the date hereof. Any such discovery by Dealer shall not affect the validity or effectiveness of the release contained herein.

(c) Dealer, for itself, and the other Dealer Parties, hereby agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert [(i)] any Claim that is covered by the release provision in subparagraph (a) above **[IF DEALER AGREEMENTS ASSIGNED TO THE 363 ACQUIRER] [or (ii) any claim that is based upon, related to, arising from, or otherwise connected with the assignment of the Dealer Agreements or the Original Wind-Down Agreement by GM to the 363 Acquirer in the 363 Sale, if any, or an allegation that such assignment is void, voidable, otherwise unenforceable, violates any applicable law or contravenes any agreement.]** Notwithstanding anything to the contrary, Dealer acknowledges and agrees that GM will suffer irreparable harm from the breach by any Dealer Party of this covenant not to sue and therefore agrees that GM shall be entitled to any equitable remedies available to them, including, without limitation, injunctive relief, upon the breach of such covenant not to sue by any Dealer Party.

(d) Dealer shall indemnify, defend and hold the GM Parties harmless, from and against any and all claims, demands, fines, penalties, suits, causes of action, liabilities, losses, damages, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees and costs) which may be imposed upon or incurred by the GM Parties, or any of them, arising from, relating to, or caused by Dealer's (or any other Dealer Parties') breach of this Agreement or Dealer's execution or delivery of or performance under this Agreement. "Affiliate" means, with respect to any Person (as defined below), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. "Person" means an individual, partnership, limited liability company, association, corporation or other entity. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

3. Due Authority. Dealer and the individual(s) executing this Agreement on behalf of Dealer hereby jointly and severally represent and warrant to GM that this Agreement has been duly authorized by Dealer and that all necessary corporate action has been taken and all necessary corporate approvals have been obtained in connection with the execution and delivery of and performance under this Agreement.

4. Confidentiality. Dealer hereby agrees that, without the prior written consent of GM, it shall not, except as required by law, disclose to any person (other than its agents or employees having a need to know such information in the conduct of their duties for Dealer, which agents or employees shall be bound by a similar undertaking of confidentiality) the terms or conditions of this Agreement or any facts relating hereto or to the underlying transactions.

5. Informed and Voluntary Acts. Dealer has reviewed this Agreement with its legal, tax, or other advisors, and is fully aware of all of its rights and alternatives. In executing this Agreement, Dealer acknowledges that its decisions and actions are entirely voluntary and free from any duress.

6. Binding Effect. This Agreement shall be binding upon any replacement or successor dealer as referred to in the Dealer Agreements and any successors or assigns. This Agreement shall be binding upon any replacement or successor dealer as referred to in the Dealer Agreements and any successors or assigns, and shall benefit any of GM's successors or assigns.

7. Continuing Jurisdiction. By executing this Agreement, Dealer hereby consents and agrees that the Bankruptcy Court shall retain full, complete and exclusive jurisdiction to interpret, enforce, and

15 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009 OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN

adjudicate disputes concerning the terms of this Agreement and any other matter related thereto. The terms of this Section 7 shall survive the termination of this Agreement.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Michigan.

9. No Reliance. The parties represent and agree that, in entering into this Agreement, they have not relied upon any oral or written agreements, representations, statements, or promises, express or implied, not specifically set forth in this Agreement. No waiver, modification, amendment or addition to this Agreement is effective unless evidenced by a written instrument signed by an authorized representative of the parties, and each party acknowledges that no individual will be authorized to orally waive, modify, amend or expand this Agreement. The parties hereto expressly waive application of any law, statute, or judicial decision allowing oral modifications, amendments, or additions to this Agreement notwithstanding this express provision requiring a writing signed by the parties.

[Signature Page Follows]

15 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009 OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN

IN WITNESS WHEREOF, Dealer has executed this Agreement through its duly authorized officer as of the day and year first above written.

_____

By:_____
Name:_____
Title:_____

15 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009 OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN

EXHIBIT B

SEC. 747. (a) DEFINITIONS.—For purposes of this section the following definitions apply:

(1) The term "covered manufacturer" means—

(A) an automobile manufacturer in which the United States Government has an ownership interest, or to which the Government has provided financial assistance under title I of the Emergency Economic Stabilization Act of 2008; or

(B) an automobile manufacturer which acquired more than half of the assets of an automobile manufacturer in which the United States Government has an ownership interest, or to which the Government has provided financial assistance under title I of the Emergency Economic Stabilization Act of 2008.

(2) The term "covered dealership" means an automobile dealership that had a franchise agreement for the sale and service of vehicles of a brand or brands with a covered manufacturer in effect as of October 3, 2008, and such agreement was terminated, not assigned in the form existing on October 3, 2008 to another covered manufacturer in connection with an acquisition of assets related to the man-

ufacture of that vehicle brand or brands, not renewed, or not continued during the period beginning on October 3, 2008, and ending on December 31, 2010.

(b) A covered dealership that was not lawfully terminated under applicable State law on or before April 29, 2009, shall have the right to seek, through binding arbitration, continuation, or reinstatement of a franchise agreement, or to be added as a franchisee to the dealer network of the covered manufacturer in the geographical area where the covered dealership was located when its franchise agreement was terminated, not assigned, not renewed, or not continued. Such continuation, reinstatement, or addition shall be limited to each brand owned and manufactured by the covered manufacturer at the time the arbitration commences, to the extent that the covered dealership had been a dealer for such brand at the time such dealer's franchise agreement was terminated, not assigned, not renewed, or not continued.

(c) Before the end of the 30-day period beginning on the date of the enactment of this Act, a covered manufacturer shall provide to each covered dealership related to such covered manufacturer a summary of the terms and the rights accorded under this section to a covered dealership and the specific criteria pursuant to which such deal-

er was terminated, was not renewed, or was not assumed and assigned to a covered manufacturer.

(d) A covered dealership may elect to pursue the right to binding arbitration with the appropriate covered manufacturer. Such election must occur within 40 days of the date of enactment. The arbitration process must commence as soon as practicable thereafter with the selection of the arbitrator and conclude with the case being submitted to the arbitrator for deliberation within 180 days of the date of enactment of this Act. The arbitrator may extend the time periods in this subsection for up to 30 days for good cause. The covered manufacturer and the covered dealership may present any relevant information during the arbitration. The arbitrator shall balance the economic interest of the covered dealership, the economic interest of the covered manufacturer, and the economic interest of the public at large and shall decide, based on that balancing, whether or not the covered dealership should be added to the dealer network of the covered manufacturer. The factors considered by the arbitrator shall include (1) the covered dealership's profitability in 2006, 2007, 2008, and 2009, (2) the covered manufacturer's overall business plan, (3) the covered dealership's current economic viability, (4) the covered dealership's satisfaction of the performance objectives established pursuant to the

applicable franchise agreement, (5) the demographic and geographic characteristics of the covered dealership's market territory, (6) the covered dealership's performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume or not assign the covered dealership's franchise agreement, and (7) the length of experience of the covered dealership. The arbitrator shall issue a written determination no later than 7 business days after the arbitrator determines that case has been fully submitted. At a minimum, the written determination shall include (1) a description of the covered dealership, (2) a clear statement indicating whether the franchise agreement at issue is to be renewed, continued, assigned or assumed by the covered manufacturer, (3) the key facts relied upon by the arbitrator in making the determination, and (4) an explanation of how the balance of economic interests supports the arbitrator's determination.

(e) The arbitrator shall be selected from the list of qualified arbitrators maintained by the Regional Office of the American Arbitration Association (AAA), in the Region where the dealership is located, by mutual agreement of the covered dealership and covered manufacturer. If agreement cannot be reached on a suitable arbitrator, the parties shall request AAA to select the arbitrator. There

will be no depositions in the proceedings, and discovery shall be limited to requests for documents specific to the covered dealership. The parties shall be responsible for their own expenses, fees, and costs, and shall share equally all other costs associated with the arbitration, such as arbitrator fees, meeting room charges, and administrative costs. The arbitration shall be conducted in the State where the covered dealership is located. Parties will have the option of conducting arbitration electronically and telephonically, by mutual agreement of both parties. The arbitrator shall not award compensatory, punitive, or exemplary damages to any party. If the arbitrator finds in favor of a covered dealership, the covered manufacturer shall as soon as practicable, but not later than 7 business days after receipt of the arbitrator's determination, provide the dealer a customary and usual letter of intent to enter into a sales and service agreement. After executing the sales and service agreement and successfully completing the operational prerequisites set forth therein, a covered dealership shall return to the covered manufacturer any financial compensation provided by the covered manufacturer in consideration of the covered manufacturer's initial determination to terminate, not renew, not assign or not assume the covered dealership's applicable franchise agreement.

(f) Any legally binding agreement resulting from a voluntary negotiation between a covered manufacturer and covered dealership(s) shall not be considered inconsistent with this provision and any covered dealership that is a party to such agreement shall forfeit the right to arbitration established by this provision.

(g) Notwithstanding the requirements of this provision, nothing herein shall prevent a covered manufacturer from lawfully terminating a covered dealership in accordance with applicable State law.

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION
AUTOMOBILE INDUSTRY SPECIAL BINDING ARBITRATION PROGRAM

In the Matter of the Arbitration between:

Re: 72 532 01370 09
Rally Auto Group, Inc.
VS
General Motors, LLC

Written Determination of Arbitrator

I, the undersigned Arbitrator, having been designated pursuant to Section 747 of the Consolidated Appropriations Act of 2010 (Public Law 111-117) (the "Act"), enacted December 16, 2009, and having been duly sworn and having heard the proofs and allegations of the parties, do hereby make my Written Determination pursuant to the Act.

Background

The Act affords a "covered dealership" (as defined in Section 747(a)(2)) the right to challenge by binding arbitration the decision of a "covered manufacturer" (as defined in Section 747(a)(1)(A) and (B)) to terminate, or not to assign, renew or continue, the covered dealership's franchise agreement. This case was filed in accordance with the Act's provisions and I held hearings and heard testimony on May 13, 14 and 17, 2010. The parties submitted closing briefs on May 28, 2010, and the arbitrator determined that the case had been fully submitted as of May 28, 2010. Set forth below is my "written determination" (as provided for in 747(d) of the Act) of the issue to be decided under the Act, namely "whether or not the covered dealership should be added to the dealer network of the covered manufacturer." This Determination is being issued within seven (7) business days after the case was fully submitted.

I. The Parties

This proceeding concerns the automobile dealership known as Rally Auto Group located at 39012 Carriage Way Palmdale, California 93551 ("Rally"). Rally is a "covered dealership" as defined in Section 747(a)(2).

The "covered manufacturer" for purposes of this arbitration is General Motors, LLC, which is the current owner of the General Motors automobile manufacturing business. For convenience, the terms "General Motors" and "GM" is refers to both General Motors, LLC and General Motors Corporation.

II. Determination

Rally, the covered dealership described above in Section I, shall be added to the dealer network of General Motors, LLC, as to the Cadillac, Buick and GMC brands, in the manner provided for by the Act and in accordance with the terms and conditions of the Act.

Rally, the covered dealership described above in Section I, shall not be added to the dealer network of General Motors, LLC, with respect to the Chevrolet brand.

III. Key Facts Relied on by the Arbitrator in Making the Determination

In accordance with Section 747, I considered the following factors:

1. The covered dealership's profitability in 2006, 2007, 2008 and 2009;
2. The covered manufacturer's overall business plan;
3. The covered dealership's current economic viability;
4. The covered dealership's satisfaction of the performance objectives established pursuant to the applicable franchise agreement;
5. The demographic and geographic characteristics of the covered dealership's market territory;
6. The covered dealership's performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume or not assign the covered dealership's franchise agreement, and
7. The length of experience of the covered dealership.

In making the determination, I relied upon the following key facts:

General Motors' overall business plan includes reducing the total number of GM dealers nationwide, for the purpose of increasing the sales volumes ("throughput"), and thus the profitability, of the remaining GM dealers. The plan anticipates that this increase in dealer profitability will enable dealers to invest in better facilities, provide better customer service and, in general, compete more effectively with non-GM brands. General Motors' plan for the Palmdale area is to replace Rally as the Chevrolet dealer with a dealership owned and operated by Lou Gonzalez, operator of a successful Saturn dealership in Palmdale, which is being wound down with the elimination by GM of the

Saturn brand. GM plans to remove the Cadillac, Buick and GMC brands from the Palmdale GM dealership.

Rally has many years of experience as a General Motors dealer in Palmdale, California, and has been operated by its current owner/operator, Larry Mayle, for around 20 years. It currently sells the Cadillac, Buick, GMC and Chevrolet brands, from two facilities. Rally's facilities are adequate, and it is currently economically viable. It has sufficient working capital, availability of inventory financing and adequate staffing. During the years 2006 through 2009 Rally's operations were profitable. (See below for further discussion of 2008 profitability).

The Dealer Sales and Service Agreement between Rally and General Motors, which is the applicable franchise agreement, establishes a variety of performance objectives. (Ex. 1) In Article 5.1(f) of the agreement Rally agreed "to comply with the retail sales standards established by General Motors, as amended from time to time." Ex. 1, p. 6. Article 9 of the agreement ("Review of Dealer's Sales Performance") provides that "Satisfactory performance of Dealer's sales obligations under Article 5.1 requires Dealer to achieve a Retail Sales Index equal or greater than 100." Ex. 1, p. 17. The Retail Sales Index ("RSI") is the ratio of a dealer's reported retail sales to the sales necessary to equal the state average expected market share for the brand in question in the dealer's Area of Primary Responsibility ("APR"), adjusting for the popularity of various types and sizes of vehicles in the APR.

Rally did not achieve an RSI of 100 for any of its Chevrolet, Cadillac, Buick and GMC brands for the years 2006 through 2008, except for an RSI of 102.82 for Cadillac in 2008. These RSI scores ranked Rally low in sales performance as compared with other General Motors dealers. Rally's RSI has been particularly low for the Chevrolet brand. For Chevrolet its RSI in 2006 was 53.60, in 2007 was 50.36, and in 2008 was 53.07.

During 2006-2008, and in prior years, General Motors regularly communicated to Rally that General Motors considered Rally's levels of sales, particularly Chevrolet, to be inadequate and in need of substantial improvement. (Exs. 88, 201-203). After Rally received a "wind down" letter from General Motors in May 2009,[1] its sales performance improved, but that performance, under threat of termination, may not be as indicative of future performance as is Rally's historical sales record.

The demographic factors in Rally's area of principal responsibility ("APR") include high levels of unemployment, a working population that largely commutes "down the hill" to the greater Los Angeles area, with long commuting times. Rally contends that

---

[1] In its "wind down" letter to Rally dated May 14, 2009, GM advised Rally that it did not expect its contractual relationship with Rally to continue past October 2010. The wind down letter was followed by a Wind Down Agreement, allowing Rally to operate its GM dealership through October 31, 2010, but imposing certain restrictions, including inability of Rally to purchase new GM vehicles from GM.

these factors make the state-wide RSI scores misleading as applied to Rally. However, the comparatively high sales levels and RSI scores of the General Motors dealership in Victorville, California, a community comparable in many respects to Palmdale, tends to show that the RSI scores, based on General Motors' state-wide market share for various vehicle categories, provide a realistic measure for dealer sales performance in the Palmdale market The Palmdale Saturn dealership, operated by Lou Gonzalez, also has consistently achieved high RSI scores, again confirming that General Motors' RSI measure is applicable in Rally's market.

One of the criteria used by GM in deciding to terminate or not assign a dealer's franchise agreement is the Dealer Performance Score ("DPS"). This score measures the dealer's performance in four categories, which are weighted as follows:

Sales	50%
Customer Satisfaction Index	30%
Capitalization	10%
Profitability	10%

GM treats a score of 100 as average, and a score below 70 as poor performance. GM publicly stated that "Dealers with a score less than 70 received a wind-down agreement." (Ex. 26).

For 2008, GM calculated a DPS score for Rally of 55.27. (Ex. 31). The evidence showed, however, that this score depended on using an estimated LIFO adjustment to Rally's profits for 2008, rather than pre-LIFO profits or the actual, not estimated, LIFO profits. Using the latter two profit figures, Rally's DPS score was approximately 85.

IV. Balance of Economic Interests

The balance of economic interests of the covered dealership, of the covered manufacturer and of the public supports this determination for the reasons set forth below.

General Motors' decision to replace Rally as a Chevrolet dealer with a dealership operated by GM's former Saturn dealer in the Palmdale market is consistent with General Motors' plan to develop a stronger dealer network. Although there is no assurance of the new dealers' success, there is a reasonable basis, based on prior performance, for concluding that General Motors will obtain significantly stronger representation in the Palmdale area through that dealer than through Rally. The public will benefit by having a more active and aggressive Chevrolet sales effort in that market. In addition, there is some basis in Rally's customer satisfaction scores to conclude that customer service from the new Chevrolet dealer will be improved.

In the arbitrator's view, the balance of economic interests supports a determination that Rally should be able to retain its dealership for the Cadillac, Buick and GMC brands. Rally has a long history as a GM dealer, with millions of dollars invested in its business and facilities. Its sales performance has been somewhat better for these

brands than for the Chevrolet brand. The public will benefit by continuing to be able to purchase these brands in Palmdale, without having to drive at least 37 miles to the nearest dealer selling these brands. Because General Motors has decided to retain one GM dealer in the Palmdale area, it will likely not achieve the cost savings in that area that it expects to achieve by large-scale reductions in the number of its dealers. The evidence did not show a benefit to either GM or the public by eliminating these brands from the Palmdale market. Also, the evidence showed that there is some uncertainty about the physical capacity of the new Chevrolet dealer to provide parts and service for the full range of GM brands, and the public will benefit by the continued availability of parts and service from Rally.

VI. Costs

In accordance with the statute, the administrative fees and expenses, and the arbitrator's fees and expenses, shall be borne equally.

This Award is in full settlement of all claims submitted to this arbitration.

Date: June 8, 2010.

Richard Mainland, Arbitrator

EXHIBIT D

FERRUZZO & FERRUZZO, LLP
GREGORY J. FERRUZZO, SBN 165782
A Limited Liability Partnership,
including Professional Corporations
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone (949) 608-6900

MORGANSTERN, MAC ADAMS & DE VITO CO., L.P.A.
CHRISTOPHER M. DE VITO, OH BAR 47118
623 West Stain Clair Avenue
Cleveland, Ohio 44113
Telephone 9216) 687-1212
Attorneys for Petitioner, Rally Auto Group, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC.

Petitioner-Covered Dealership,

v.

GENERAL MOTORS, LLC

Respondent-Covered Manufacturer.

Case No. SACV10-01236 DOC (Ex)

PETITION TO MODIFY OR, ALTERNATIVELY, VACATE AN ARBITRATION AWARD

(Hearing and Oral Argument Requested)

The Petitioner-Covered Dealership Rally Auto Group, Inc. hereby submits this Petition to modify or, alternatively, to vacate a June 8, 2010 American Arbitration Association Award ("Award") involving Respondent-Covered Manufacturer, General Motors, LLC.

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

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FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

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FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

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June 3, 2009, State Senate Commerce Committee-Full Committee: ***GM And Chrysler Dealership Closures: Protecting Dealers and Consumers*** 2

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FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

1. PARTIES

Petitioner Rally Auto Group, Inc. ("Rally") is an automobile dealership located at 39012 Carriage Way, Palmdale, California 93551. Rally is a "covered dealership," as defined in Section 747(a)(2) of the Consolidated Appropriations Act of 2010 (Public Law 111-117) (the "Act" or "Section 747"), enacted December 16, 2009. (A true and correct copy of the Act is attached as Exhibit "1" to Petitioner's Appendix of Authorities in Support of Petition to Modify / Vacate Arbitration Award and Request for Judicial Notice filed concurrently herewith [hereinafter "Appendix"].)

Respondent General Motors, LLC ("GM") is the current owner of the General Motors automobile manufacturing business and has its principal place of business in Detroit, Michigan. GM is a "covered manufacturer" as defined by Section 747(a)(1) of the Act.

2. JURISDICTION

While the Federal Arbitration Act's ("FAA") standards apply to this dispute, the FAA "bestow[s] no federal jurisdiction but rather require[s] an independent jurisdictional basis." *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 128 S.Ct. 1396, 1402, 170 L.Ed.2d 254 (2008), citing *Moses H. Cone*, 460 U.S. at 25 n. 32, 103 S.Ct. 927. The District Court, however, has federal question jurisdiction in this case under 27 U.S.C. § 1331 because it involves Section 747 of the Act, a law enacted by Congress (Public Law 111-117). (Appendix Exhibit "1.")

3. VENUE

Venue is proper in this Court, pursuant to 9 U.S.C.A. § 10 and § 11, because the Arbitration was conducted in the City of Orange and the Award at issue was made within the Court's geographical district.

4. BACKGROUND

A. Section 747 of the Consolidated Appropriations Act of 2010

The underlying arbitration proceeding was timely initiated pursuant to Section 747 of the Consolidated Appropriations Act of 2010 (Public Law 111-117, 123 Stat. 3034 (2009)) ("Section 747" or "Act" [Appendix Exhibit "1"). The genesis of Section 747 was the voluntary

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

petitions for bankruptcy filed by GM and Chrysler Corporation in the summer of 2009. Both GM and Chrysler previously applied for and received loans from the U.S. Government through the Troubled Asset Relief Program ("TARP") emergency funding program.

In the bankruptcy proceedings, both GM and Chrysler used a provision in the Bankruptcy Code to circumvent state franchise laws and summarily terminate or "wind down" (under the threat of termination) the franchises of over 2,000 independent auto dealers throughout the United States.

The House of Representatives, Committee on the Judiciary, held three (3) days of hearings on the "*Ramifications of Auto Industry Bankruptcies*." The stated purpose of the hearings was to review "the ramifications of auto bankruptcies and their effect on dealers and other issues" (emphasis added).[1] Other Congressional committees also conducted investigations, hearings, and gathered evidence regarding the manufacturer's "expedited bankruptcy proceedings."[2] Congress passed Section 747 of the Act because of the "bipartisanship concern in Congress of the mass closure of GM and Chrysler dealerships." (Emphasis added.) (*Id.*)

Recently, on July 19, 2009, the Office of the Special Inspector General for TARP ("SIGTARP") confirmed Congress' concerns in a report entitled, "***Factors Effecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks***." SIGTARP

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[1] House of Representatives, Subcommittee on Commercial and Administrative Law, Committee of the Judiciary, "***Ramifications of Auto Industry Bankruptcies (Part III)***," Serial No. 111-55, p. 1 (July 22, 2009) [Appendix Exhibit "7"; this subcommittee also held hearings on May 21, 2009, and July 21, 2009].

[2] June 3, 2009, State Senate Commerce Committee-Full Committee [Appendix Exhibit "6"]:
GM And Chrysler Dealership Closures: Protecting Dealers and Consumers;
June 10, 2009, Senate Banking Committee-Full Committee:
The State of the Domestic Automobile Industry: Impact of Federal Assistance;
June 12, 2009, House Energy and Commerce Committee-Subcommittee on Oversight, Investigations [Appendix Exhibit "5"]:
GM and Chrysler Dealership Closures and Restructuring;
September 16, 2009, House Small Business Committee-Subcommittee on Rural Development, Entrepreneurship and Trade:
The Role of Automobile Dealerships in Rural Economies.

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

concluded that its review "demonstrates that GM did not consistently follow its stated criteria" regarding the wind-down and termination of dealerships. (Appendix Exhibit "4," p. 30.) SIGTARP also found, just as troubling, the fact that GM had "little or no documentation of the decision-making process to terminate or retain dealerships... ." (*Id.*) The SIGTARP report also held that GM's acceleration of dealership closings "was not done with any explicit cost savings to the manufacturer in mind." (Appendix Exhibit "4," p. 29.)

It is precisely because of the arbitrary and capricious actions of GM and Chrysler in the Bankruptcy Court, after acceptance of Federal TARP loans, that Section 747 mandated that any manufacturer who accepted money from the Federal government had to provide the "specific criteria" for their rejection or wind-down of dealerships. The Act further required these American Arbitration Association ("AAA") proceedings, if a dealer made demand on the manufacturer, for a hearing before a neutral arbitrator to protect the parties' due process rights.

Section 747(b) states "[A] covered dealership that was not lawfully terminated under applicable state law on or before April 29, 2009, shall have the right to seek, through binding arbitration, continuation or reinstatement of a franchise agreement... ." The Petitioner herein was not lawfully terminated and sought arbitration. That legal prerequisite to these proceedings has been met.

Section 747(c) provides a legal and factual prerequisite upon the covered manufacturer (*i.e.* GM): provide the covered dealer, within thirty (30) days of the enactment of the Act, "specific criteria" as to why the dealer was terminated. The Congressional Record explained:

> "We intend this process to provide transparency and avoid the excessive costs and delays of litigation and discovery disputes. **The manufacturer should provide the respective covered dealers with each and every detail and criteria related to the evaluations of the dealership** and the decisions to terminate, not assign, not renew or discontinue. It is anticipated that the manufacturers will be cooperative and forthcoming and that all relevant information will be provided promptly."

Congressional Record-House, H14477 (December 10, 2009) [Appendix Exhibit "2"]. (Emphasis added.) There must be compliance with the legal and factual prerequisites in order to frame the issues at the arbitration hearing.

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The Federal legislation is clear that there is a tri-partite balancing test, which must be performed by the arbitrator, regarding "the economic interest of the covered dealership, the economic interest of the covered manufacturer, and the economic interest of the public at large." Section 747 (d). The Act sets forth seven (7) required factors[3] that the arbitrator must consider **AND** "that the covered dealership may present any relevant information during the arbitration." Section 747(d). The law provides the remedy of "continuation," as well as "reinstatement," of the covered dealership's franchise agreement. Section 747(b) and (d).

Petitioner sought the remedy of "continuation" as well as "reinstatement" or "addition" of the covered dealership's franchise agreement pursuant to Section 747(b) and (e) of the Act.

B. Procedural and Factual History

On January 13, 2010, GM provided its required notice regarding the specific criteria which it used to issue the covered dealership (*i.e.* Rally) a wind-down agreement for its Chevrolet, Buick, Pontiac, GMC, and Cadillac brands. The only two (2) criteria listed were as follows: "2008 overall DPS total dealership score under 70" and "2008 overall RSI total dealership score under 70."

Rally timely commenced an arbitration with AAA. The matter was assigned AAA Case No. 72-532-01370-09 and Arbitrator Richard Mainland. Testimony was heard at the hearings held on May 13, 14, and 17, 2010. The parties submitted closing briefs on May 28, 2010.

Award in Favor of Rally

In this matter, the Arbitrator determined that Rally exceeded GM's publicly stated and sworn criteria (*i.e.* DPS) for terminating the covered dealership, based upon the Dealer

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[3] "The factors considered by the arbitrator shall include:
(1) the covered dealership's profitability in 2006, 2007, 2008, and 2009,
(2) the covered manufacturer's overall business plan,
(3) the covered dealership's current economic viability,
(4) the covered dealership's satisfaction of the performance objectives established pursuant to the applicable franchise agreement,
(5) the demographic and geographic characteristics of the covered dealership's market territory,
(6) the covered dealership's performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume or not assign the covered dealership's franchise agreement, and
(7) the length of experience of the covered dealership." (Section 747(d).)

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Performance Score ("DPS") being below the 70 DPS index average. (Appendix Exhibit "8," p. 4.) The Award held that "Rally's DPS score was approximately 85." (Appendix Exhibit "8," p. 4.) Rally should not have been given a wind-down agreement based on GM's stated specific criteria. The Award's calculation of Rally's DPS score included all five (5) brands of the covered dealership: Chevrolet, Buick, Pontiac, GMC, and Cadillac. The Rally dealership has one (1) GM Business Activity Code for all five (5) GM brands. The Rally dealership has one GM Dealer Sales and Service Agreement which allows it to sell and service all five (5) brands. The Rally dealership submits one (1) Operating Statement to GM every month. The Rally dealership is evaluated by GM (*i.e.* profitability, working capital, sales and service satisfaction, etc.) as one (1) dealership. The Award should be modified and/or vacated regarding the *dicta* attempting to take the Chevrolet brand from the covered dealership's franchise and give it to a former Saturn dealer. (Appendix Exhibit "8," p. 4.)

Award Exceeds Powers and Scope of Authority

On June 8, 2010, AAA disseminated Arbitrator Richard Mainland's Award to the parties. (Appendix Exhibit "8".) The Award held that the covered dealership (*i.e.* Rally) "shall be added to the dealer networks of General Motors, LLC, as to the Cadillac, Buick and GMC brands, in the manner provided for by the Act and in accordance with the terms and conditions of the Act." (Appendix Exhibit "8," p. 2.) The Award also determined that the Chevrolet brand should be continued in Rally's market. However, the Arbitrator exceeded the scope of his authority by attempting to **remove** the Chevrolet brand from the "covered dealership" and give it to a non-party, a former Saturn dealer.[4]

Award on Matters Not Submitted

The Act does not allow for the splitting of brands within the "covered dealership" and only grants the Arbitrator the authority to "decide, based on that balancing, whether or not the ***covered dealership*** should be added to the dealer network of the covered manufacturer." (Emphasis added.) (Section 747(d).) The Act defined "covered dealership" as "an automobile

[4] Specifically, the Award stated that, with respect to the Chevrolet brand Rally "shall not be added to the dealer network of General Motors, LLC." (*Id.*)

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dealership that had a franchise agreement for the sale and service of vehicles of ***a brand or brands*** with a covered manufacturer." (Emphasis added.) (Section 747(a)(2).) Congress intended that the "covered dealership," with or without all brands desired by the manufacturer, should be added back to the dealer network.[5] The Award held that Chevrolet should be added back to GM's dealer network. Thus, Rally should keep its Chevrolet brand.

Award's Remedy Beyond Authority Because Involves Non-Party

The Arbitrator exceeded the scope of the authority granted by Section 747(d) of the Act and it must be modified and/or vacated in part to conform with the Federal law. The Award impermissibly provides the remedy of taking Rally's Chevrolet brand and giving it to "GM's former Saturn dealer in the Palmdale market." (Appendix Exhibit "8," p. 4.) The Arbitrator did not have the authority to take a brand away from a covered dealership and give it to another dealer within the same marketplace. (Section 747(b) and (d).) To the contrary, since GM's overall business plan is to maintain representation and the Award determined that Rally and the Chevrolet brand should be continued in this market[6], the Arbitrator could not "cherry pick" one brand to take from Rally and give it to a former Saturn dealer. (*Id.*)

GM Agreed to Allow Original Dealer to Represent Needed Market

GM's CEO, Fritz Henderson, testified to Congress that "in the event we need to put a place—put a location back, one of the things that we committed to the Senate and I'll commit to you today, is that if we need to relocate a spot there, ***we will provide the existing operator the opportunity to actually look at that first.***"[7] (Emphasis added.) [Appendix Exhibit "5," p.

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[5] Congressional Record, H14478 (Appendix Exhibit "2").

[6] The Award found in favor of Rally to maintain its Buick, GMC, and Cadillac brands. (Appendix Exhibit "8," p. 2.) The Award also held that the Chevrolet brand should be maintained in this market. (Appendix Exhibit "8," p. 4.) The Award admitted that the "evidence showed that there is some uncertainty about the physical capacity of the new Chevrolet dealer to provide parts and service for the full range of GM brands, and the public will benefit by the continued availability of the parts and service from Rally." (Emphasis added.) (Appendix Exhibit "8," p. 5.) Thus, Rally's "covered dealership" facility is necessary to sell and service the Chevrolet brand in this market, in addition to the Buick, GMC, and Cadillac brands.

[7] June 12, 2009, House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, ***Hearing on GM and Chrysler Dealership Closures and***

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Telephone: (949) 608-6900

66]

GM's CEO, Fritz Henderson, testified a second time and reiterated that "if we've made mistakes in the future, we've concluded we cannot take care of customers in the location and a point needs to be put back. ***We would go to whoever the individual was effected and give them the first chance to do that.***"[8] (Emphasis added.) [Appendix Exhibit "5," p. 66] The Award has determined that GM needs Chevrolet representation and Rally is entitled to continue representation as the "covered dealership" in the Palmdale market.

Judicial Estoppel

GM is judicially estopped from arguing a contrary position since it was successful during the bankruptcy proceeding and consummated its 363 sale. *Greer-Burger v. Temesi*, 116 Ohio St. 3de 324, 879 N.E. 2d 174, 2007-Ohio-6442, ¶ 25 ["Courts apply judicial estoppel in order to 'preserve the integrity of the courts by preserving a party from abusing the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposing to suit an exigency of the moment," quoting *Telendyne Industries, Inc. v. NLRB* (C.A. 6, 1990), 911 F. 2d 1214, 1218.]

GM achieved its 363 sale by promising to "***provide the existing operator the opportunity***" and "***give them the first chance***" to be added back to represent GM in the market. GM took a contrary position in this arbitration and through "undue means" obtained an arbitration award seeking to take the Chevrolet brand from Rally and give it to the former Saturn dealer in the same market. Similarly, GM achieved its 363 sale by representing to the bankruptcy court that it used an "objective" DPS index standard of below 70. GM took a contrary position during the arbitration and "cherry-picked" the Retail Sales Index ("RSI") from the DPS index and errantly calculated Rally's DPS score. GM is legally bound to follow its "objective" and "stated criteria" (i.e. DPS) regarding Rally, which requires continuation and/or reinstatement of the Chevrolet brand.

Restructuring (Appendix Exhibit "5").

[8] (*Id.*)

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

5. STATEMENT OF LAW

This matter involves the FAA (Federal Arbitration Act), which was Congressionally enacted and codified at 9 U.S.C.A. § 1, *et seq.*, as it applies to Petitioner Rally and Respondent GM's Federally mandated automobile industry special binding arbitration, pursuant to Section 747 of the Act. This matter seeks modification or, alternatively, partial vacation of a June 8, 2010 Award based upon 9 U.S.C.A. §§ 10 and 11.

Congress has limited the ability of Federal courts to review arbitration awards in order to promote the policy of favoring arbitration as an expeditious and relatively inexpensive means of resolving disputes. See 9 U.S.C. § 9; see also, *Schoenduve Corporation v. Lucent Technologies, Inc.*, 442 F. 3d 737, 731 (3rd Cir. 2006). However, the Circuit Courts[9] have cautioned that the district court is **neither "entitled nor encouraged simply to 'rubber stamp' the interpretations and decisions of arbitrators."**

Recently, the Eight District explained that the deference owed to arbitration awards "**is not the equivalent of a grant of limitless power.**" *Stark v. Sandberg, Phoenix & von Gontard, P.C.*, 381 F. 3d 793, 799 (8th Cir. 2004) (citation omitted) (emphasis added). Congress has enacted protections to (1) modify or correct and/or (2) vacate an arbitration award pursuant to certain enumerated circumstances. (9 U.S.C. §§ 10-11.) In this matter, valid grounds exist on the face of the arbitration Award to modify or, alternatively, partially vacate the June 8, 2010 Award.

A. Modifying or Correcting Arbitration Awards

The FAA delineates in 9 U.S.C. § 11 the District Court's power to modify or correct an arbitration award as follows:

> **§11. Same; modification or correction; grounds; order**
> In either of the following cases the United States court in and

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[9] *Matteson v. Rider Sys., Inc.*, 99 F3d 108, 113 (C.A. 3 1996) (citations omitted); *Michigan Family Resources, Inc. v. Service Employees International Union Local 517M*, 475 F.3d 746, 760 (C.A. 6 2007); *Metromedia Energy, Inc. v. Ensearch Energy Services*, 409 F.3d 574, 579 (C.A. 3 205); *Stark v. Sandberg, Phoenix & von Gontard, P.C.*, 381 F.3d 793, 799 (C.A. 8 2004); *Madison Hotel v. Hotel and Restaurant Employees, Local 25, AFL-CIO*, 128 F.3d 743, 749 (C.A. D.C. 1997); *Santa Fe Pacific Corporation v. Centra States, Southwest Areas Pension Fund*, 22 F.3d 725 (C.A. 7 1994).

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

> for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration -
>
> (a) Where there was an evident material miscalculation of figures or an **evident material mistake in the description** of any person, thing, or property referred to in the award.
>
> (b) Where the arbitrators have **awarded upon a matter not submitted** to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.
>
> **The order may modify and correct the award**, so as to effect the intent thereof **and promote justice between the parties.**" (Emphasis added.)

In this matter, Rally seeks modification and correction, pursuant to Section 11(a), based upon the material mistake in the description in the Award (*i.e.* "covered dealership" versus Chevrolet brand) and Section 11(b) based upon the fact that there was a determination upon a matter not submitted — or could have been submitted — regarding (1) the severing of a brand from the "covered dealership" franchise and (2) the remedy to take away the Chevrolet brand from Rally's Buick, Pontiac, GMC, and Cadillac covered dealership business and give it to a former Saturn dealer in the same marketplace. Both separate modification grounds, independently or together, justify - as a matter of law - correcting the Award to promote justice between the parties and promote the remedial purpose of Section 747.

Circuit Courts have held that a district court may modify an award and strike the portion of the award on a matter not submitted to the arbitrator for determination. *Off Shore Marine Towing v. MR23*, 412 F.3d 1254 (2005); *Totem Marine Tug and Barge, Inc. v. North American Towing, Inc.*, 607 F.2d 649 (1979). Similarly, an award which evidently mistakes the description of the matter being considered, also allows modification by a district court. Congress specifically explained through the plain language of the FAA, that any modification by a district court should "promote justice between the parties." (9 U.S.C. § 11.)

In this matter, justice requires modification to remove the Award's *dicta*, which inappropriately attempts to take the Chevrolet brand from the "covered dealership" and give it to a former Saturn dealers in the same marketplace. Since the Award determined that Chevrolet, Buick, GMC, and Cadillac should be maintained in the Palmdale market, the

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

"covered dealership" (*i.e.* Rally) has the right to continue with all four (4) brands. There exists an (1) evident material mistake in the description of the "covered dealership," which errantly excluded the Chevrolet brand, and (2) an award upon a matter not submitted or authorized for consideration, which gave the Chevrolet brand to a non-party and fashioned a remedy beyond the authority established in Section 747 of the Act. Once the Award determined that the Chevrolet brand should be continued in the local market and that Rally should be maintained, the arbitrator's responsibility was completed.

B. Vacating Arbitration Awards

The FAA also delineates the following four (4) bases for a District Court to vacate or partially vacate an arbitration award in 9 U.S.C. § 10, as follows:

> **§10. Same; vacation; grounds; rehearing**
> (a) In any of the following cases, the United States court in an for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration-
> (1) Where the award was procured by **corruption, fraud, or undue means**;
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them;
> (3) Where the **arbitrators were guilty of misconduct** in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; **or of any other misbehavior by which the rights of any party have been prejudiced;** or
> (4) Where the **arbitrators exceeded their powers, or so imperfectly executed them** that a mutual, final, and definite award upon the subject matter submitted was not made."

In this matter, Rally seeks partial vacation pursuant to Subsections (a)(1), (3), and (4). The subsections authorizing vacating an award, when an arbitrator is "guilty of misconduct" or "misbehavior" (*i.e.* 10(a)(3)) and/or "exceeded their powers" or "so imperfectly executed them" (*i.e.* 10(a)(4)), have collectively been described as the "manifest disregard" of the law by the United States Supreme Court. *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576, 585, 128 S.Ct. 1396, 1404 (2008).

Misconduct and Misbehavior, Section 10(a)(3)

The Arbitrator in this matter was guilty of misconduct, misbehavior, and exceeded his power (*i.e.* "manifest disregard") by (1) ruling on a matter not submitted for determination and

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(2) attempting to fashion a remedy not authorized by Section 747 of the Act. Specifically, the Award attempts to carve out and take one GM brand (*i.e.* Chevrolet) from the "covered dealership" and give it to a former Saturn dealer (*i.e.* non-party) within the same market territory. Section 747 of the Act clearly limits the Arbitrator's authority to only determine whether the "covered dealership" (*i.e.* not GM brands) should be continued, reinstated, or added "as a franchisee to the dealer network of the covered manufacturer in the geographical area where the covered dealership was located ... ." (Section 747(b).)

Exceeded and Imperfectly Executed Powers, Section 10(a)(4)

Furthermore, even if the Arbitrator could sever a brand from within the "covered dealership," which is not specifically authorized by the Act, the remedy fashioned in the Award exceeds the Arbitrator's power. Circuit Courts have held that arbitrators exceed or imperfectly execute their powers when they determine rights and obligations of individuals who are not parties to the arbitration proceedings. *NCR Corporation v. SAC-CO., Inc.*, 43 F.3d 1076, 1080 (6th Cir. 1995); *International Brotherhood of Electrical Workers, Local No. 265 v. O.K. Electric Co.*, 793 F.2d 214 (8th Cir. 1986); *Orion Shipping and Trading Company v. Eastern States Petroleum Corp. of Panama,* 312 F.2d 299 (2d Cir.), *cert. denied*, 373 U.S. 949, 83 S.Ct. 1679, 10 L.Ed. 2d 705 (1963). In this matter, the former Saturn dealer was awarded the franchise, even though it was not a party to the arbitration proceedings. The Award, as a matter of law, cannot determine the "rights and obligations" of a non-party regarding Rally's Chevrolet brand and its "covered dealership" facility in Palmdale.

Corruption, Fraud, and Undue Means by GM, Section 10(a)(1)

Subsection 10(a)(1) allows for the vacation of an arbitration award if it was procured by "corruption, fraud, or undue means." Respondent GM procured the Award in this matter through its "corruption, fraud and undue means." (1) GM publicly stated to Congress that if its dealer network plans determined a brand needed representation in a market, then the original dealership would have the opportunity to continue in the local market. (2) GM also publicly stated to Congress and represented to the bankruptcy court that it used an "objective" DPS standard to evaluate and determine which dealerships were terminated. **BOTH** of these

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

statements were contradicted by GM in this AAA matter and require partial vacation of the Award as a matter of law and equity as to the Chevrolet brand.

GM Promised to Allow the Original Dealer to Continue in a Needed Market

GM's CEO, Fritz Henderson, testified to Congress that "in the event we need to put a place—put a location back, one of the things that we committed to the Senate and I'll commit to you today, is that if we need to relocate a spot there, ***we will provide the existing operator the opportunity to actually look at that first.***"[10] (Emphasis added.) [Appendix Exhibit "5," p. 66.] GM's CEO, Fritz Henderson, testified a second time and reiterated that "if we've made mistakes in the future, we've concluded we cannot take care of customers in the location and a point needs to be put back. ***We would go to whoever the individual was effected and give them first chance to do that.***"[11] (Emphasis added.) [Appendix Exhibit "5," p. 66.]

The Award established that GM needs and plans on having Chevrolet representation in this market (Award, p. 4). However, the Award failed to apply this undisputed fact to this matter. GM needs Chevrolet representation in Palmdale and Rally is legally entitled to continue representation, as the operator and the "covered dealership," to follow GM's business plan and sworn statements to other tribunals (*i.e.* Bankruptcy Court, Congress).

GM Represented an "Objective" DPS Standard to Bankrupty Court and Congress

GM is judicially estopped from arguing a contrary position since it was successful during the bankruptcy proceeding and consummated its 363 sales of assets. *Greer-Burger v. Temesi*, 116 Ohio St. 3d 324, 8789 N.E. 3d 174, 2007-Ohio-6442. ¶ 25, quoting *Teledyne Industries, Inc. v. NLRB* (C.A. 6, 1990), 911 F.2d 1214, 1218. GM achieved its 363 sale by representing to the bankruptcy court and Congress that it used an "objective" DPS index standard of below 70 to terminate a covered dealership."[12] GM took a contrary position during the AAA

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[10] June 12, 2009, House Committee on Energey and Commerce, Subcommittee on Oversight and Investigations, ***Hearing on GM and Chrysler Dealership Closures and Restructuring*** (Appendix Exhibit "5").

[11] (*Id.*)

[12] GM Dealer Network analysis presented to House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations on June 12, 2009.

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Telephone: (949) 608-6900

Arbitration and "cherry-picked" the RSI of the Chevrolet brand from the DPS as justification to take the Chevrolet brand from Rally and give it to a former Saturn dealer in the same market. GM also errantly calculated Rally's DPS score. The Award determined that properly taking into consideration legitimate LIFO accounting adjustments, Rally's DPS score was approximately 85 and that Rally should be maintained in the market. (Appendix Exhibit "8," p. 4.)

GM took a contrary position in this arbitration and through "undue means" obtained an arbitration award taking the Chevrolet brand because Rally allegedly had a low RSI Score. As a matter of law and equity, the Chevrolet brand must be continued with the "covered dealership" because (1) Rally exceeded GM's "objective" DPS standard and (2) GM plans on maintaining Chevrolet representation in this local market.

6. ARGUMENT OF LAW AND FACT

That portion of the Arbitration Award which allows GM to "replace" Rally as a Chevrolet dealership with another dealership in the Palmdale market exceeds the authority of the Arbitrator.

The Federal Arbitration Act allows the District Court to strike a portion of an Arbitrator's Award pertaining to an issue not subject to arbitration.

> "In sum, the Federal Arbitration Act allows a federal court to correct a technical error, to strike all or a portion of an award pertaining to an issue not at all subject to *998 arbitration, and to vacate an award that evidences affirmative misconduct in the arbitral process or the final result or that is completely irrational or exhibits a manifest disregard for the law."
>
> *Kyocera Corporation v. Prudential-Bache Trade Services* (2003) 34 F.3d 987 at 997-998.

Specifically, 9 USC §10(a)(4) permits the United States Court in the District wherein the award was made to vacate that part of an award where the Arbitrator exceeds their powers.

> "Section 10(a)(4) provides that an award may be vacated where the arbitrators exceeded their powers. Some circuits have specifically held that arbitrators exceed their powers when they determine rights and obligations of individuals who are not parties to the arbitration proceedings."

(http://energycommerce.house.gov/Press_111/20090612/gmnetworkanalysis.pdf) [Appendix Exhibit "3"]

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

NCR Corporation v. SAC-CO., Inc. (1995) 43 F.3d 1076 at 1080

The case of NCR Corporation (*supra*) arises out of a contract dispute between a manufacturer of electronic cash registers and one of its dealers. The arbitrator in that case awarded punitive damages against the manufacturer which were ordered to be paid to dealers who were not parties to the arbitration. In that case the District Court Magistrate vacated the punitive damages part of the arbitrator's award on the grounds that the arbitrator exceeded the scope of his authority by awarding the recovery of punitive damages payable to non-parties. In its decision, the Court of Appeals, Sixty Circuit, affirmed the judgment vacating part of the arbitrator's award which exceeded his authority. The present case is analogous in that the Arbitrator exceeded his authority by allowing GM "to replace Rally as a Chevrolet dealer with a dealership operated by GM's former Saturn dealer in the Palmdale market".

The case of *Schoenduve Corporation v. Lucent Technologies, Inc.* (2006) 442 F.3d 727 examined the scope of the arbitrator's authority to award relief. In its decision the Court considered the contract requiring arbitration and the parties' demand for arbitration to determine the scope of the arbitrator's authority. In the present case the scope of the Arbitrator's authority is very narrow and specific. The federal law, Section 747(d), which authorizes this arbitration proceeding states that "the arbitrator shall balance the economic interest of the covered dealership, the economic interest of the covered manufacturer, and the economic interest of the public at large **and shall decide, based on that balancing, whether or not the covered dealership should be added to the dealer network of the covered manufacturer"** (Emphasis added). This is the only determination which the arbitrator is authorized to make. This arbitration proceeding does not authorize the arbitrator to decide if Rally should be replaced as the Chevrolet dealer by another dealer in Palmdale.

As part of the chain of events which led to the enactment of Section 747, GM has asserted that it was critical to the reorganization of the company to reduce the size of its dealer network. The Business Plans which GM submitted to the government set forth a need to reduce the number of dealerships in its dealer network. The bankruptcy of GM allowed the company the ability to threaten the rejection of dealer franchise agreements and enabled GM to obtain the

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

"Wind-down Agreements" by which GM sought to reduce the size of its dealer body. The Answering Statement submitted by GM in the arbitration hearings, which were conducted under Section 747, details GM's plan to reduce the total number of dealers by eliminating those dealers who had inadequate facilities or undesirable locations. The issue to be determined by the arbitrator was whether Rally should be eliminated. The premise behind Section 747 and the scope of the arbitrator's authority was not whether underperforming dealers should be replaced with other dealers who GM believes might perform better. To include this determination in the arbitrator's decision improperly expands the scope of the arbitrator's authority and required modification.

Where an arbitrator includes in their award a form of relief or remedy not submitted to the arbitrator, the District Court may properly modify the award to exclude any such provision. In the case of *Offshore Marine Towing v. MR23* (2005) 412 F.3d 1254, the plaintiff, Offshore Marine Towing, Inc., sought to enforce a maritime salvage lien against a vessel. The District Court ordered the parties to arbitration. The arbitrator awarded plaintiff its claim under the lien and also awarded plaintiff the recovery of attorneys fees and costs. The owner of the vessel moved to modify or vacate the award of attorneys fees. The District Court modified the arbitration award to exclude the attorneys fees because attorneys fees may not be awarded in an *in rem* action for a salvage lien.

The Court of Appeals, Eleventh Circuit, affirmed the finding that

> "Because attorney's fees may not be awarded in an *in rem* action for a salvage lien and the issue of attorney's fees was not submitted to the arbitrator, the district court correctly modified the arbitration award in favor of OMT to exclude attorney's fees and costs".
>
> *Offshore Marine Towing Inc. (supra)* at page 1258.

In the present case, Petitioner Rally respectfully submits that the determination of whether or not the Chevrolet franchise at issue here might do better if the dealer (Rally) was replaced with another dealer (the former Saturn dealer) was not an issue properly before the Arbitrator and this determination exceeds the authority of the Arbitrator. (Section 747(d).)

In his Decision, the Arbitrator found that Rally had been a GM dealer for many years, that

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Newport Beach, California 92660
Telephone: (949) 608-6900

its dealership facilities were adequate and that the business was economically viable. The Arbitrator determined that after taking into account the LIFO accounting conversion employed in the dealership's operating statements that the dealership's total DPS score was approximately 87, not 55 which GM used as justification for terminating the dealership. As a result, the Arbitrator concluded that the dealership should be reinstated. The arbitrator also determined that the public needed Chevrolet representation in the Palmdale market. The Arbitrator's inquiry should have ended there. Rally, as the covered dealership, should have been reinstated for all GM brands including Chevrolet.

7. CONCLUSION

Petitioner Rally seeks the remedy of modifying and partially vacating the AAA Award's *dicta* attempting to take the Chevrolet brand from the covered dealership and give it to a non-party, a former Saturn dealer, in the same local Palmdale market. Rally also requests any and all other equitable relief the Court deems appropriate and necessary, in order to effectuate its decision, including, but not limited to, maintaining the *status quo* until a final determination requiring GM to continue/add back the Chevrolet brand with Rally's existing and reinstated Buick, GMC, and Cadillac GM lines of new motor vehicles.

Dated: August 13, 2010

FERRUZZO & FERRUZZO, LLP

By: _____
Gregory J. Ferruzzo

MORGANSTERN, MAC ADAMS & DE VITO CO., LPA

By: s/ Christopher M. DeVito
Christopher M. DeVito

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)	DEFENDANTS
RALLY AUTO GROUP, INC.	GENERAL MOTORS, LLC
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)	Attorneys (If Known)
FERRUZZO & FERRUZZO LLP (949) 608-6900 3737 Birch Street, Suite 400 Newport Beach, California 92660 (SEE ATTACHED CO-COUNSEL INFORMATION)	

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☑ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☑ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☑ No ☐ MONEY DEMANDED IN COMPLAINT: $_____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

9 USC Sections 10 and 11 - Petition to Modify/Vacate Arbitration Award

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
☐ 400 State Reapportionment	☐ 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	☐ 510 Motions to Vacate Sentence Habeas Corpus	☐ 710 Fair Labor Standards Act
☐ 410 Antitrust	☐ 120 Marine	☐ 310 Airplane	☐ 370 Other Fraud	☐ 530 General	☐ 720 Labor/Mgmt. Relations
☐ 430 Banks and Banking	☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 371 Truth in Lending	☐ 535 Death Penalty	☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 450 Commerce/ICC Rates/etc.	☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 380 Other Personal Property Damage	☐ 540 Mandamus/ Other	☐ 740 Railway Labor Act
☐ 460 Deportation	☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Fed. Employers' Liability	☐ 385 Property Damage Product Liability	☐ 550 Civil Rights	☐ 790 Other Labor Litigation
☐ 470 Racketeer Influenced and Corrupt Organizations	☐ 151 Medicare Act	☐ 340 Marine	BANKRUPTCY	☐ 555 Prison Condition	☐ 791 Empl. Ret. Inc. Security Act
☐ 480 Consumer Credit	☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 422 Appeal 28 USC 158	FORFEITURE/ PENALTY	PROPERTY RIGHTS
☐ 490 Cable/Sat TV	☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 423 Withdrawal 28 USC 157	☐ 610 Agriculture	☐ 820 Copyrights
☐ 810 Selective Service	☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	CIVIL RIGHTS	☐ 620 Other Food & Drug	☐ 830 Patent
☐ 850 Securities/Commodities/ Exchange	☐ 190 Other Contract	☐ 360 Other Personal Injury	☐ 441 Voting	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 840 Trademark
☐ 875 Customer Challenge 12 USC 3410	☐ 195 Contract Product Liability	☐ 362 Personal Injury-Med Malpractice	☐ 442 Employment	☐ 630 Liquor Laws	SOCIAL SECURITY
☑ 890 Other Statutory Actions	☐ 196 Franchise	☐ 365 Personal Injury-Product Liability	☐ 443 Housing/Accommodations	☐ 640 R.R. & Truck	☐ 861 HIA (1395ff)
☐ 891 Agricultural Act	REAL PROPERTY	☐ 368 Asbestos Personal Injury Product Liability	☐ 444 Welfare	☐ 650 Airline Regs	☐ 862 Black Lung (923)
☐ 892 Economic Stabilization Act	☐ 210 Land Condemnation	IMMIGRATION	☐ 445 American with Disabilities - Employment	☐ 660 Occupational Safety /Health	☐ 863 DIWC/DIWW (405(g))
☐ 893 Environmental Matters	☐ 220 Foreclosure	☐ 462 Naturalization Application	☐ 446 American with Disabilities - Other	☐ 690 Other	☐ 864 SSID Title XVI
☐ 894 Energy Allocation Act	☐ 230 Rent Lease & Ejectment	☐ 463 Habeas Corpus-Alien Detainee	☐ 440 Other Civil Rights		☐ 865 RSI (405(g))
☐ 895 Freedom of Info. Act	☐ 240 Torts to Land	☐ 465 Other Immigration Actions			FEDERAL TAX SUITS
☐ 900 Appeal of Fee Determination Under Equal Access to Justice	☐ 245 Tort Product Liability				☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 950 Constitutionality of State Statutes	☐ 290 All Other Real Property				☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: **SACV10-01236 DOC (Ex)**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☑ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	City of Palmdale, County of Los Angeles

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	State of Michigan

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Orange	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date August 13, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

FERRUZZO & FERRUZZO, LLP
GREGORY J. FERRUZZO, SBN 165782
A Limited Liability Partnership,
including Professional Corporations
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone (949) 608-6900
MORGANSTERN, MAC ADAMS & DE VITO CO., L.P.A.
CHRISTOPHER M. DE VITO, OH BAR 47118
623 West Stain Clair Avenue
Cleveland, Ohio 44113
Telephone 9216) 687-1212
Attorneys for Petitioner, Rally Auto Group, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC. Petitioner-Covered Dealership, v. GENERAL MOTORS, LLC Respondent-Covered Manufacturer.	Case No. **PLAINTIFF COUNSEL INFORMATION**

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge David O. Carter and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

SACV10- 1236 DOC (Ex)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[ ] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[X] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:
FERRUZZO & FERRUZZO LLP
Gregory J. Ferruzzo, SBN 165782
3737 Birch Street, Suite 400
Newport Beach, California 92660
(949) 608-6900 (SEE ATTACHED CO-COUNSEL INFORMATION)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC.

PLAINTIFF(S)

v.

GENERAL MOTORS, LLC

DEFENDANT(S).

CASE NUMBER

SACV10-01236 DOC (Ex)

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, FERRUZZO & FERRUZZO LLP *, whose address is 3737 Birch Street, Suite 400, Newport Beach, California 92660 *. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.
(* SEE ATTACHED CO-COUNSEL INFORMATION)

Clerk, U.S. District Court

Dated: AUG 13 2010

By: ROLLS ROYCE PASCHAL
Deputy Clerk

1144

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

FERRUZZO & FERRUZZO, LLP
GREGORY J. FERRUZZO, SBN 165782
A Limited Liability Partnership,
including Professional Corporations
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone (949) 608-6900
MORGANSTERN, MAC ADAMS & DE VITO CO., L.P.A.
CHRISTOPHER M. DE VITO, OH BAR 47118
623 West Stain Clair Avenue
Cleveland, Ohio 44113
Telephone 9216) 687-1212
Attorneys for Petitioner, Rally Auto Group, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC. Petitioner-Covered Dealership, v. GENERAL MOTORS, LLC Respondent-Covered Manufacturer.	Case No. **PLAINTIFF COUNSEL INFORMATION**

EXHIBIT A

Palmdale, CA

WIND-DOWN AGREEMENT

THIS WIND-DOWN AGREEMENT (this "Agreement") is made and entered into as of the 1st day of June, 2009, by and between Rally Auto Group, Inc. ("Dealer"), and GENERAL MOTORS CORPORATION ("GM").

RECITALS

A. Dealer and GM are the parties to Dealer Sales and Service Agreements (the "Dealer Agreements") for Chevrolet, Pontiac, Buick, Cadillac, GMC Truck motor vehicles (the "Existing Model Lines"). Capitalized terms not otherwise defined in this Agreement shall have the definitions set forth for such terms in the Dealer Agreements.

B. GM is the debtor and debtor-in-possession in a bankruptcy case (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), having filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). No trustee has been appointed and GM is operating its business as debtor-in-possession.

C. GM intends to sell, convey, assign and otherwise transfer certain of its assets (the "363 Assets") to a purchaser (the "363 Acquirer") pursuant to Section 363 of the Bankruptcy Code (the "363 Sale"), subject to approval by and order of the Bankruptcy Court.

D. GM has considered moving and may, at its option, move to reject the Dealer Agreements in the Bankruptcy Case, as permitted under the Bankruptcy Code, unless Dealer executes and delivers this Agreement to GM on or before June 12, 2009.

E. In return for the payments set forth herein and GM's willingness not to pursue the immediate rejection of the Dealer Agreements in the Bankruptcy Case, Dealer desires to enter into this Agreement (i) to allow Dealer, among other things, to wind down its Dealership Operations in an orderly fashion (specifically including the sale of all of Dealer's new Motor Vehicles), (ii) to provide for Dealer's voluntary termination of the Dealer Agreements, GM's payment of certain monetary consideration to Dealer, and Dealer's covenants regarding its continuing Dealership Operations under the Dealer Agreements, as supplemented by the terms of this Agreement (the "Subject Dealership Operations"), and (iii) to provide for Dealer's release of GM, the 363 Acquirer and their related parties from any and all liability arising out of or connected with the Dealer Agreements, any predecessor agreement(s) thereto, and the relationship between GM and Dealer relating to the Dealer Agreements, and any predecessor agreement(s) thereto, all on the terms and conditions set forth herein.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing recitals and the premises and covenants contained herein, Dealer and GM hereby agree (subject to any required Bankruptcy Court approvals) as follows:

1. Assignment-363 Sale. Dealer acknowledges and agrees that GM has the right, but not the obligation, to seek to assign the Dealer Agreements and this Agreement in the Bankruptcy Case to the 363 Acquirer. As part of the 363 Sale, provided such sale closes, GM may, in its sole discretion, assign the Dealer Agreements and this Agreement to the 363 Acquirer. If GM elects to exercise its option to assign the Dealer Agreements and this Agreement, Dealer specifically agrees to such assignment and agrees not to object to or protest any such assignment.

2. Termination of Dealer Agreements. Subject to the terms of Section 1 above:

(a) Dealer hereby covenants and agrees to conduct the Subject Dealership Operations until the effective date of termination of the Dealer Agreements, which shall not occur earlier than January 1, 2010 or later than October 31, 2010, under and in accordance with the terms of the Dealer Agreements, as supplemented by the terms of this Agreement. Accordingly, Dealer hereby terminates the Dealer Agreements by written agreement in accordance with Section 14.2 thereof, such termination to be effective on October 31, 2010. Notwithstanding the foregoing, either party may, at its option, elect to cause the effective date of termination of the Dealer Agreements to occur (if not terminated earlier as provided herein) on any date after December 31, 2009, and prior to October 31, 2010, upon thirty (30) days written notice to the other party. In addition, and notwithstanding the foregoing, if Dealer has sold of all of its new Motor Vehicle inventory on or before December 31, 2009 and wishes to terminate the Dealer Agreements prior to January 1, 2010, Dealer may request that GM or the 363 Acquirer, as applicable, approve such termination and, absent other limiting circumstances, GM or the 363 Acquirer, as applicable, shall not unreasonably withhold its consent to such termination request, subject to the terms of this Agreement.

(b) Concurrently with its termination of the Dealer Agreements, Dealer hereby conveys to GM or the 363 Acquirer, as applicable, a non-exclusive right to use Dealer's customer lists and service records for the Subject Dealership Operations, and within ten (10) days following GM's or the 363 Acquirer's, as applicable, written request, Dealer shall deliver to GM or the 363 Acquirer, as applicable, digital computer files containing copies of such lists and records. Such right of use shall include without limitation the right to communicate with and solicit business and information from customers identified in such lists and records and to assign such non-exclusive right to third parties without thereby relinquishing its own right of use.

3. Payment to Dealer.

(a) Subject to Sections 1 and 2 above, in consideration of (i) Dealer's execution and delivery to GM of this Agreement, (ii) Dealer's agreement to sell its new Motor Vehicle inventory as set forth below, and (iii) the termination of the Dealer Agreements by written agreement in accordance with Section 14.2 thereof (as set forth in Section 2 of this Agreement), GM or the 363 Acquirer, as applicable, shall pay, or cause to be paid, to Dealer the sum of $1,059,953 (the "Wind-Down Payment Amount"), subject to the terms herein. This payment is consideration solely for Dealer's covenants, releases and waivers set forth herein, and Dealer's transfer to GM or the 363 Acquirer, as applicable, of a non-exclusive right to use the customer lists and service records.

(b) GM shall pay twenty-five percent (25%) of the Wind-Down Payment Amount (the "Initial Payment Amount") to Dealer by crediting Dealer's open account maintained by GM on the GM Dealer Payment System (the "Open Account"), in accordance with GM's standard practices, within ten (10) business days following the later of (i) GM's receipt of any required Bankruptcy Court approvals, or (ii) full execution and delivery of this Agreement. GM or the 363 Acquirer, as applicable, shall pay the balance of the Wind-Down Payment Amount (the "Final Payment Amount") to Dealer, subject to the terms of this Agreement, by crediting Dealer's Open Account in accordance with its standard practices, within ten (10) business days after all of the following have occurred: (i) Dealer has sold all of its new Motor Vehicle inventory for the Existing Model Lines prior to the termination of the Dealer Agreements, (ii) Dealer's compliance with all applicable bulk transfer, sales tax transfer or similar laws and the expiration of all time periods provided therein, (iii) Dealer's delivery to GM or the 363 Acquirer, as applicable, of

certificates of applicable taxing authorities that Dealer has paid all sales, use, and other taxes or evidence reasonably satisfactory to GM or the 363 Acquirer, as applicable, that GM or the 363 Acquirer, as applicable, will have no liability or obligation to pay any such taxes that may remain unpaid, (iv) the effective date of termination of the Dealer Agreements in accordance with Section 2(a) above, (v) Dealer's compliance with the terms of Section 4(c) below, (vi) GM's or the 363 Acquirer's, as applicable, receipt of the fully executed Supplemental Wind-Down Agreement in substantially the form attached hereto as Exhibit A (subject to inclusion of information specific to Dealer's Dealership Operations), and (vii) GM's or the 363 Acquirer's, as applicable, receipt of any required Bankruptcy Court approvals. GM or the 363 Acquirer, as applicable, may, in its sole discretion, waive in writing any of the conditions for payment set forth in the preceding sentence.

(c) In addition to any other setoff rights under the Dealer Agreements, payment of all or any part of the Wind-Down Payment Amount may, in GM's or the 363 Acquirer's, as applicable, reasonable discretion, be (i) reduced by any amount owed by Dealer to GM or the 363 Acquirer, as applicable, or their Affiliates (as defined below), and/or (ii) delayed in the event GM or the 363 Acquirer, as applicable, has a reasonable basis to believe that any party has or claims any interest in the assets or properties of Dealer relating to the Subject Dealership Operations including, but not limited to, all or any part of the Wind-Down Payment Amount (each, a "Competing Claim"), in which event GM or the 363 Acquirer, as applicable, may delay payment of all or any part of the Wind-Down Payment Amount until GM or the 363 Acquirer, as applicable, has received evidence in form and substance reasonably acceptable to it that all Competing Claims have been fully and finally resolved.

4. Complete Waiver of All Termination Assistance Rights. In consideration of the agreements by GM hereunder, upon the termination of the Dealer Agreements, as provided in this Agreement, and cessation of the Subject Dealership Operations, the following terms shall apply in lieu of Dealer's rights to receive termination assistance, whether under the Dealer Agreements or applicable laws, all of which rights Dealer hereby waives:

(a) Neither GM nor the 363 Acquirer, as applicable, shall have any obligation to repurchase from Dealer any Motor Vehicles whatsoever.

(b) Neither GM nor the 363 Acquirer, as applicable, shall have any obligation to repurchase from Dealer any Parts or Accessories or Special Tools whatsoever.

(c) Dealer shall eliminate or remove from the Dealership Premises all Dealer-owned signs (freestanding or not) for the Subject Dealership Operations within thirty (30) days following the effective date of termination at no cost to either GM or the 363 Acquirer, as applicable. Dealer understands and agrees that neither GM nor the 363 Acquirer, as applicable, will purchase any Dealer-owned signs used in connection with the Subject Dealership Operations. Dealer hereby waives any rights it may have to require either GM or the 363 Acquirer, as applicable, to purchase any signs used or useful in connection with the Subject Dealership Operations. Dealer shall provide, or shall cause the owner of the Dealership Premises to provide, GMDI access to the Dealership Premises in order for GMDI to remove all GM signs leased to Dealer by GMDI. Dealer understands and agrees that the Wind-Down Payment Amount was determined by GM in part based on Dealer's agreement that it will timely remove all signs for the Subject Dealership Operations and will not require or attempt to require GM or the 363 Acquirer, as applicable, to purchase any or all of such signs pursuant to the provisions of the Dealer Agreements or any applicable statutes, regulations, or other laws.

(d) Dealer expressly agrees that the provisions of Article 15 of the Dealer Agreements do not, by their terms, apply to this termination.

(e) Dealer expressly agrees that all termination rights of Dealer are set forth herein and expressly agrees that any termination assistance otherwise available to Dealer as set forth in the Dealer Agreements or any state statute or regulation shall not apply to Dealer's termination of the Dealer Agreements.

(f) The terms of this Section 4 shall survive the termination of this Agreement.

5. Release; Covenant Not to Sue; Indemnity.

(a) Dealer, for itself, its Affiliates and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Dealer Parties"), hereby releases, settles, cancels, discharges, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever (specifically including any claims which are pending in any court, administrative agency or board or under the mediation process of the Dealer Agreements), whether known or unknown, foreseen or unforeseen, suspected or unsuspected ("Claims"), which Dealer or anyone claiming through or under Dealer may have as of the date of the execution of this Agreement against GM, the 363 Acquirer, their Affiliates or any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors or assigns (collectively, the "GM Parties"), arising out of or relating to (i) the Dealer Agreements or this Agreement, (ii) any predecessor agreement(s), (iii) the operation of the dealership for the Existing Model Lines, (iv) any facilities agreements, including without limitation, any claims related to or arising out of dealership facilities, locations or requirements, Standards for Excellence ("SFE") related payments or bonuses (except that GM shall pay any SFE payments due Dealer for the second (2nd) quarter of 2009 and neither GM nor the 363 Acquirer, as applicable, shall collect any further SFE related payments from Dealer for the third (3rd) quarter of 2009 or thereafter), and any representations regarding motor vehicle sales or profits associated with Dealership Operations under the Dealer Agreements, or (v) any other events, transactions, claims, discussions or circumstances of any kind arising in whole or in part prior to the effective date of this Agreement, provided, however, that the foregoing release shall not extend to (x) reimbursement to Dealer of unpaid warranty claims if the transactions giving rise to such claims occurred within ninety (90) days prior the date of this Agreement, (y) the payment to Dealer of any incentives currently owing to Dealer or any amounts currently owing to Dealer in its Open Account, or (z) any claims of Dealer pursuant to Section 17.4 of the Dealer Agreements, all of which amounts described in (x) - (z) above of this sentence shall be subject to setoff by GM or the 363 Acquirer, as applicable, of any amounts due or to become due to either or any of its Affiliates. GM or the 363 Acquirer, as applicable, shall not charge back to Dealer any warranty claims approved and paid by GM or the 363 Acquirer, as applicable, prior to the effective date of termination, as described in Section 3 above, after the later to occur of (A) the date six (6) months following payment, or (B) the effective date of termination, except that GM or the 363 Acquirer, as applicable, may make charge-backs for false, fraudulent or unsubstantiated claims within two (2) years of payment.

(b) Dealer hereby acknowledges, understands and agrees that the foregoing release extends to, and is expressly intended by Dealer to extend to, all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected. In this regard, Dealer hereby

expressly waives the benefit, if any, to Dealer of Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Dealer expressly assumes the risk that after the execution and delivery of this Agreement by Dealer, Dealer may discover facts which are different from those facts which Dealer believed to be in existence on the date hereof. Any such discovery by Dealer shall not affect the validity or effectiveness of the release contained herein.

(c) As set forth above, GM reaffirms the indemnification provisions of Section 17.4 of the Dealer Agreements and specifically agrees that such provisions apply to all new Motor Vehicles sold by Dealer.

(d) Dealer, for itself, and the other Dealer Parties, hereby agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert (i) any Claim that is covered by the release provision in subparagraph (a) above or (ii) any claim that is based upon, related to, arising from, or otherwise connected with the assignment of the Dealer Agreements or this Agreement by GM to the 363 Acquirer in the 363 Sale, if any, or an allegation that such assignment is void, voidable, otherwise unenforceable, violates any applicable law or contravenes any agreement. As a result of the foregoing, any such breach shall absolutely entitle GM or the 363 Acquirer, as applicable, to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's, as applicable, application for injunctive relief and prohibiting any further act by Dealer in violation of this Section 7. In addition, GM or the 363 Acquirer, as applicable, shall have all other equitable rights in connection with a breach of this Section 7 by Dealer, including, without limitation, the right to specific performance.

(e) Dealer shall indemnify, defend and hold the GM Parties harmless, from and against any and all claims, demands, fines, penalties, suits, causes of action, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees and costs) which may be imposed upon or incurred by the GM Parties, or any of them, arising from, relating to, or caused by Dealer's (or any other Dealer Party's) breach of this Agreement or Dealer's execution or delivery of or performance under this Agreement. "Affiliate" means, with respect to any Person (as defined below), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. "Person" means an individual, partnership, limited liability company, association, corporation or other entity. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

(f) The terms of this Section 5 shall survive the termination of this Agreement.

6. Subject Dealership Operations. From the effective date of this Agreement until the effective date of termination of the Dealer Agreements (which shall not occur prior to January 1, 2010, subject to Section 2(a) above):

(a) Dealer shall not, and shall have no right to, purchase Motor Vehicles from GM or the 363 Acquirer, as applicable, which rights Dealer hereby waives.

(b) Dealer shall have the right to purchase service parts from GM or the 363 Acquirer, as applicable, to perform warranty service and other normal service operations at the Dealership Premises during the term of this Agreement. Dealer shall have no obligation, however, to follow the recommendations of GM's service parts operations' retail inventory management ("RIM") process, which recommendations are provided for guidance purposes only. Dealer's future orders of service parts of any kind (as well as service parts currently on hand and those acquired in the future from a source other than GM or the 363 Acquirer, as applicable), including but not limited to RIM-recommended orders, shall not be eligible for return.

(c) Dealer shall not, and shall have no right to, propose to GM or the 363 Acquirer, as applicable (under Section 12.2 of the Dealer Agreements or otherwise) or consummate a change in Dealer Operator, a change in ownership, or, subject to GM's or the 363 Acquirer's, as applicable, option, a transfer of the dealership business or its principal assets to any Person; provided, however, that GM or the 363 Acquirer, as applicable, shall honor the terms of Section 12.1 of the Dealer Agreements upon the death or incapacity of the Dealer Operator, except that the term of any new Dealer Agreements under Subsection 12.1.5 shall expire on October 31, 2010, subject to the terms of this Agreement. Accordingly, neither GM nor the 363 Acquirer, as applicable, shall have any obligation (under Section 12.2 of the Dealer Agreements or otherwise) to review, process, respond to, or approve any application or proposal to accomplish any such change, except as expressly otherwise provided in the preceding sentence.

(d) In addition to all other matters set forth herein, the following portions of the Dealer Agreements shall not apply; Sections 6.1 and 6.3.1 (concerning ordering of new Motor Vehicles), Article 8 (Training), Article 9 (Review of Dealer's Performance), Sections 12.2 and 12.3 (Changes in Management and Ownership), Article 15 (Termination Assistance), and Article 16 (Dispute Resolution).

(e) Except as expressly otherwise set forth herein, the terms of the Dealer Agreements, shall remain unmodified and in full force and effect.

7. No Protest.

(a) GM or the 363 Acquirer, as applicable, may desire to relocate or establish representation for the sale and service of the Existing Model Lines in the vicinity of Dealer's Dealership Premises identified in the Dealer Agreements. In consideration provided of GM's and the 363 Acquirer's, as applicable, covenants and obligations herein, Dealer covenants and agrees that it will not commence, maintain, or prosecute, or cause, encourage, or advise to be commenced, maintained, or prosecuted, or assist in the prosecution of any action, arbitration, mediation, suit, proceeding, or claim of any kind, before any court, administrative agency, or other tribunal or dispute resolution process, whether federal, state, or otherwise, to challenge, protest, prevent, impede, or delay, directly or indirectly, any establishment or relocation whatsoever of motor vehicle dealerships for any of the Existing Model Lines.

(b) Dealer, for itself and for each and all of the other Dealer Parties,, hereby releases and forever discharges the GM Parties, from any and all past, present, and future claims, demands, rights, causes of action, judgments, executions, damages, liabilities, costs, or expenses (including, without limitation, attorneys' fees) which they or any of them have or might have or acquire, whether known or unknown, actual or contingent, which arise from, are related to, or are

associated in any way with, directly or indirectly, the establishment or relocation of any of such Existing Model Lines.

(c) Dealer hereby acknowledges, understands and agrees that the foregoing release extends to, and is expressly intended by Dealer to extend to, all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected. In this regard, Dealer hereby expressly waives the benefit, if any, to Dealer of Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Dealer expressly assumes the risk that after the execution and delivery of this Agreement by Dealer, Dealer may discover facts which are different from those facts which Dealer believed to be in existence on the date hereof. Any such discovery by Dealer shall not affect the validity or effectiveness of the release contained herein..

(d) Dealer recognizes that it may have some claim, demand, or cause of action of which it is unaware and unsuspecting which it is giving up pursuant to this Section 7. Dealer further recognizes that it may have some loss or damage now known that could have consequences or results not now known or suspected, which it is giving up pursuant to this Section 7. Dealer expressly intends that it shall be forever deprived of any such claim, demand, cause of action, loss, or damage and understands that it shall be prevented and precluded from asserting any such claim, demand, cause of action, loss, or damage.

(e) Dealer acknowledges that, upon a breach of this Section 7 by Dealer, the determination of the exact amount of damages would be difficult or impossible and would not restore GM or the 363 Acquirer, as applicable, to the same position it would occupy in the absence of breach. As a result of the foregoing, any such breach shall absolutely entitle GM or the 363 Acquirer, as applicable, to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's, as applicable, application for injunctive relief and prohibiting any further act by Dealer in violation of this Section 7. In addition, GM or the 363 Acquirer, as applicable, shall have all other equitable rights in connection with a breach of this Section 7 by Dealer, including, without limitation, the right to specific performance.

8. Due Authority. Dealer and the individual(s) executing this Agreement on behalf of Dealer hereby jointly and severally represent and warrant to GM that this Agreement has been duly authorized by Dealer and that all necessary corporate action has been taken and all necessary corporate approvals have been obtained in connection with the execution and delivery of and performance under this Agreement.

9. Confidentiality. Dealer hereby agrees that, without the prior written consent of GM or the 363 Acquirer, as applicable,, it shall not, except as required by law, disclose to any person (other than its agents or employees having a need to know such information in the conduct of their duties for Dealer, which agents or employees shall be bound by a similar undertaking of confidentiality) the terms or conditions of this Agreement or any facts relating hereto or to the underlying transactions.

10. Informed and Voluntary Acts. Dealer has reviewed this Agreement with its legal, tax, or other advisors, and is fully aware of all of its rights and alternatives. In executing this Agreement, Dealer acknowledges that its decisions and actions are entirely voluntary and free from any duress.

11. Binding Effect. This Agreement shall benefit and be binding upon the parties hereto and their respective successors or assigns. Without limiting the generality of the foregoing, after the 363 Sale occurs and provided that GM assigns the Dealer Agreements and this Agreement to the 363 Acquirer, this Agreement shall benefit and bind the 363 Acquirer.

12. Effectiveness. This Agreement shall be deemed withdrawn and shall be null and void and of no further force or effect unless this Agreement is executed fully and properly by Dealer and is received by GM on or before **June 12, 2009**.

13. Continuing Jurisdiction. By executing this Agreement, Dealer hereby consents and agrees that the Bankruptcy Court shall retain full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this Agreement and any other matter related thereto. The terms of this Section 13 shall survive the termination of this Agreement.

14. Other Agreements.

(a) Dealer shall continue to comply with all of its obligations under Channel Agreements (as defined below) between GM and Dealer, provided that GM or the 363 Acquirer, as applicable, and Dealer shall enter into any amendment or modification to the Channel Agreements required as a result of GM's restructuring plan, in a form reasonably satisfactory to GM or the 363 Acquirer, as applicable. In the event of any conflict between the terms of the Channel Agreements and this Agreement, the terms and conditions of this Agreement shall control.

(b) The term "Channel Agreements" shall mean any agreement (other than the Dealer Agreements) between GM and Dealer imposing on Dealer obligations with respect to its Dealership Operations under the Dealer Agreements, including, without limitation, obligations to relocate Dealership Operations, to construct or renovate facilities, not to protest establishment or relocation of other dealerships, to conduct exclusive Dealership Operations under the Dealer Agreements, or to meet certain sales performance standards (as a condition of receiving or retaining payments from GM or the 363 Acquirer, as applicable, or otherwise). Channel Agreements may be entitled, without limitation, "Summary Agreement," "Agreement and Business Plan," "Exclusive Use Agreement," "Performance Agreement," "No-Protest Agreement," or "Declaration of Use Restriction, Right of First Refusal, and Option to Purchase." Notwithstanding the foregoing, the term "Channel Agreement" shall not mean or refer to (i) any termination agreement of any kind with respect to the Dealer Agreements between Dealer and GM (each a "Termination Agreement"), (ii) any performance agreement of any kind between Dealer and GM (each a "Performance Agreement"), or (iii) any agreement between Dealer (or any Affiliate of Dealer) and Argonaut Holdings, Inc., a Delaware corporation and wholly-owned subsidiary of GM ("AHI"), including, without limitation, any agreement entitled "Master Lease Agreement," "Prime Lease," or "Dealership Sublease" (and Dealer shall comply with all of the terms of such agreements with AHI). Dealer acknowledges that GM shall be entitled, at its option, to move to reject any currently outstanding Termination Agreements or Performance Agreements in the Bankruptcy Case. By executing this letter agreement, Dealer agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert any objection or protest of any kind with respect to GM's rejection of such Termination Agreements or Performance Agreements.

(c) All of the Channel Agreements shall automatically terminate and be of no further force or effect on the effective date of termination of the Dealer Agreements, except that those provisions that, by their terms, expressly survive termination of the Channel Agreements shall survive the termination contemplated under this Agreement. Following the effective date of termination of the Dealer Agreements, Dealer and GM shall execute and deliver documents in recordable form reasonably satisfactory to GM or the 363 Acquirer, as applicable, confirming the termination of any Channel Agreements affecting title to real property owned or leased by Dealer or Dealer's Affiliates.

15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Michigan.

16. Counterparts. This Agreement may be executed in counterparts, each of which when signed by all of the parties hereto shall be deemed an original, but all of which when taken together shall constitute one agreement.

17. Breach. In the event of a breach of this Agreement by Dealer, GM and the 363 Acquirer shall each have all of its remedies at law and in equity, including, without limitation, the right to specific performance.

18. Complete Agreement of the Parties. This Agreement, the Dealer Agreements, and the schedules, exhibits, and attachments to such agreements (i) contain the entire understanding of the parties relating to the subject matter of this Agreement, and (ii) supersede all prior statements, representations and agreements relating to the subject matter of this Agreement. The parties represent and agree that, in entering into this Agreement, they have not relied upon any oral or written agreements, representations, statements, or promises, express or implied, not specifically set forth in this Agreement. No waiver, modification, amendment or addition to this Agreement is effective unless evidenced by a written instrument signed by an authorized representative of the parties, and each party acknowledges that no individual will be authorized to orally waive, modify, amend or expand this Agreement. The parties expressly waive application of any law, statute, or judicial decision allowing oral modifications, amendments, or additions to this Agreement notwithstanding this express provision requiring a writing signed by the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, Dealer and GM have executed this Agreement as of the day and year first above written.

Rally Auto Group, Inc.

By: _____

Name: LARRY A. MAYLE
Title: PRESIDENT

GENERAL MOTORS CORPORATION

By _____

Authorized Representative

THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009, OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN.

EXHIBIT A

SAMPLE SUPPLEMENTAL WIND-DOWN AGREEMENT

THIS SUPPLEMENTAL WIND-DOWN AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 20__, by _____, a _____ ("Dealer"), for the use and benefit of _____, a _____ ("GM") and _____, a _____ corporation ("363 Acquirer").

RECITALS

A. Dealer and GM are parties to Dealer Sales and Service Agreements for _____ motor vehicles (the "Dealer Agreements").

B. Dealer and GM are parties to that certain Wind-Down Agreement dated June __, 2009 (the "Original Wind-Down Agreement"). All initially capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Original Wind-Down Agreement.

C. **[IF DEALER AGREEMENTS ASSIGNED TO THE 363 ACQUIRER] [GM assigned all of its right, title and interest in the Dealer Agreements and the Original Wind-Down Agreement to the 363 Acquirer.]**

D. Pursuant to the Original Wind-Down Agreement, Dealer agreed to terminate the Dealer Agreements and all rights and continuing interests therein by written agreement and to release GM and its related parties from any and all liability arising out of or connected with the Dealer Agreements, any predecessor agreement(s) thereto, and the relationship between **[GM or the 363 Acquirer]** and Dealer relating to the Dealer Agreements, and any predecessor agreement(s) thereto, on the terms and conditions set forth herein, intending to be bound by the terms and conditions of this Agreement.

E. Dealer executes this Agreement in accordance with Section 3 of the Original Wind-Down Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing recitals and the premises and covenants contained herein, Dealer hereby agrees as follows:

1. Termination of Dealer Agreements.

(a) Dealer hereby terminates and cancels the Dealer Agreement by written agreement in accordance with Section 14.2 thereof. The effective date of such termination shall be _____, 20__.

(b) Dealer shall timely pay all sales taxes, other taxes and any other amounts due to creditors, arising out of the operations of Dealer.

(c) Dealer shall be entitled to receive the Final Payment Amount in accordance with the terms of the Original Wind-Down Agreement.

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2. Release; Covenant Not to Sue; Indemnity.

(a) Dealer, for itself, its Affiliates and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Dealer Parties"), hereby releases, settles, cancels, discharges, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever (specifically including any claims which are pending in any court, administrative agency or board or under the mediation process of the Dealer Agreements), whether known or unknown, foreseen or unforeseen, suspected or unsuspected ("Claims"), which Dealer or anyone claiming through or under Dealer may have as of the date of the execution of this Agreement against GM, the 363 Acquirer, their Affiliates or any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors or assigns (collectively, the "GM Parties"), arising out of or relating to (i) the Dealer Agreements or this Agreement, (ii) any predecessor agreement(s), (iii) the operation of the dealership for the Existing Model Line, (iv) any facilities agreements, including without limitation, any claims related to or arising out of dealership facilities, locations or requirements, Standards for Excellence ("SFE") related payments or bonuses (except that the 363 Acquirer shall pay any SFE payments due Dealer for the second (2nd) quarter of 2009 and the 363 Acquirer shall not collect any further SFE related payments from Dealer for the third (3rd) quarter of 2009 or thereafter), and any representations regarding motor vehicle sales or profits associated with Dealership Operations under the Dealer Agreements, or (v) any other events, transactions, claims, discussions or circumstances of any kind arising in whole or in part prior to the effective date of this Agreement, provided, however, that the foregoing release shall not extend to (x) reimbursement to Dealer of unpaid warranty claims if the transactions giving rise to such claims occurred within ninety (90) days prior the date of this Agreement, (y) the payment to Dealer of any incentives currently owing to Dealer or any amounts currently owing to Dealer in its Open Account, or (z) any claims of Dealer pursuant to Section 17.4 of the Dealer Agreements, all of which amounts described in (x) - (z) above of this sentence shall be subject to setoff by GM of any amounts due or to become due to GM or any of its Affiliates. GM shall not charge back to Dealer any warranty claims approved and paid by GM prior to the effective date of termination, as described in Section 1 above, after the later to occur of (A) the date six (6) months following payment, or (B) the effective date of termination, except that GM may make charge-backs for false, fraudulent or unsubstantiated claims within two (2) years of payment.

(b) Dealer hereby acknowledges, understands and agrees that the foregoing release extends to, and is expressly intended by Dealer to extend to, all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected. In this regard, Dealer hereby expressly waives the benefit, if any, to Dealer of Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Dealer expressly assumes the risk that after the execution and delivery of this Agreement by Dealer, Dealer may discover facts which are different from those facts which Dealer believed to

be in existence on the date hereof. Any such discovery by Dealer shall not affect the validity or effectiveness of the release contained herein.

(c) Dealer, for itself, and the other Dealer Parties, hereby agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert [(i)] any Claim that is covered by the release provision in subparagraph (a) above **[IF DEALER AGREEMENTS ASSIGNED TO THE 363 ACQUIRER] [or (ii) any claim that is based upon, related to, arising from, or otherwise connected with the assignment of the Dealer Agreements or the Original Wind-Down Agreement by GM to the 363 Acquirer in the 363 Sale, if any, or an allegation that such assignment is void, voidable, otherwise unenforceable, violates any applicable law or contravenes any agreement.]** Notwithstanding anything to the contrary, Dealer acknowledges and agrees that GM will suffer irreparable harm from the breach by any Dealer Party of this covenant not to sue and therefore agrees that GM shall be entitled to any equitable remedies available to them, including, without limitation, injunctive relief, upon the breach of such covenant not to sue by any Dealer Party.

(d) Dealer shall indemnify, defend and hold the GM Parties harmless, from and against any and all claims, demands, fines, penalties, suits, causes of action, liabilities, losses, damages, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees and costs) which may be imposed upon or incurred by the GM Parties, or any of them, arising from, relating to, or caused by Dealer's (or any other Dealer Parties') breach of this Agreement or Dealer's execution or delivery of or performance under this Agreement. "Affiliate" means, with respect to any Person (as defined below), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. "Person" means an individual, partnership, limited liability company, association, corporation or other entity. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

3. Due Authority. Dealer and the individual(s) executing this Agreement on behalf of Dealer hereby jointly and severally represent and warrant to GM that this Agreement has been duly authorized by Dealer and that all necessary corporate action has been taken and all necessary corporate approvals have been obtained in connection with the execution and delivery of and performance under this Agreement.

4. Confidentiality. Dealer hereby agrees that, without the prior written consent of GM, it shall not, except as required by law, disclose to any person (other than its agents or employees having a need to know such information in the conduct of their duties for Dealer, which agents or employees shall be bound by a similar undertaking of confidentiality) the terms or conditions of this Agreement or any facts relating hereto or to the underlying transactions.

5. Informed and Voluntary Acts. Dealer has reviewed this Agreement with its legal, tax, or other advisors, and is fully aware of all of its rights and alternatives. In executing this Agreement, Dealer acknowledges that its decisions and actions are entirely voluntary and free from any duress.

6. Binding Effect. This Agreement shall be binding upon any replacement or successor dealer as referred to in the Dealer Agreements and any successors or assigns. This Agreement shall be binding upon any replacement or successor dealer as referred to in the Dealer Agreements and any successors or assigns, and shall benefit any of GM's successors or assigns.

7. Continuing Jurisdiction. By executing this Agreement, Dealer hereby consents and agrees that the Bankruptcy Court shall retain full, complete and exclusive jurisdiction to interpret, enforce, and

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adjudicate disputes concerning the terms of this Agreement and any other matter related thereto. The terms of this Section 7 shall survive the termination of this Agreement.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Michigan.

9. No Reliance. The parties represent and agree that, in entering into this Agreement, they have not relied upon any oral or written agreements, representations, statements, or promises, express or implied, not specifically set forth in this Agreement. No waiver, modification, amendment or addition to this Agreement is effective unless evidenced by a written instrument signed by an authorized representative of the parties, and each party acknowledges that no individual will be authorized to orally waive, modify, amend or expand this Agreement. The parties hereto expressly waive application of any law, statute, or judicial decision allowing oral modifications, amendments, or additions to this Agreement notwithstanding this express provision requiring a writing signed by the parties.

[Signature Page Follows]

15 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009 OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN

IN WITNESS WHEREOF, Dealer has executed this Agreement through its duly authorized officer as of the day and year first above written.

_____

By:_____
Name:_____
Title:_____

15 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009 OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN

EXHIBIT B

SEC. 747. (a) DEFINITIONS.—For purposes of this section the following definitions apply:

(1) The term "covered manufacturer" means—

(A) an automobile manufacturer in which the United States Government has an ownership interest, or to which the Government has provided financial assistance under title I of the Emergency Economic Stabilization Act of 2008; or

(B) an automobile manufacturer which acquired more than half of the assets of an automobile manufacturer in which the United States Government has an ownership interest, or to which the Government has provided financial assistance under title I of the Emergency Economic Stabilization Act of 2008.

(2) The term "covered dealership" means an automobile dealership that had a franchise agreement for the sale and service of vehicles of a brand or brands with a covered manufacturer in effect as of October 3, 2008, and such agreement was terminated, not assigned in the form existing on October 3, 2008 to another covered manufacturer in connection with an acquisition of assets related to the man-

ufacture of that vehicle brand or brands, not renewed, or not continued during the period beginning on October 3, 2008, and ending on December 31, 2010.

(b) A covered dealership that was not lawfully terminated under applicable State law on or before April 29, 2009, shall have the right to seek, through binding arbitration, continuation, or reinstatement of a franchise agreement, or to be added as a franchisee to the dealer network of the covered manufacturer in the geographical area where the covered dealership was located when its franchise agreement was terminated, not assigned, not renewed, or not continued. Such continuation, reinstatement, or addition shall be limited to each brand owned and manufactured by the covered manufacturer at the time the arbitration commences, to the extent that the covered dealership had been a dealer for such brand at the time such dealer's franchise agreement was terminated, not assigned, not renewed, or not continued.

(c) Before the end of the 30-day period beginning on the date of the enactment of this Act, a covered manufacturer shall provide to each covered dealership related to such covered manufacturer a summary of the terms and the rights accorded under this section to a covered dealership and the specific criteria pursuant to which such deal-

er was terminated, was not renewed, or was not assumed and assigned to a covered manufacturer.

(d) A covered dealership may elect to pursue the right to binding arbitration with the appropriate covered manufacturer. Such election must occur within 40 days of the date of enactment. The arbitration process must commence as soon as practicable thereafter with the selection of the arbitrator and conclude with the case being submitted to the arbitrator for deliberation within 180 days of the date of enactment of this Act. The arbitrator may extend the time periods in this subsection for up to 30 days for good cause. The covered manufacturer and the covered dealership may present any relevant information during the arbitration. The arbitrator shall balance the economic interest of the covered dealership, the economic interest of the covered manufacturer, and the economic interest of the public at large and shall decide, based on that balancing, whether or not the covered dealership should be added to the dealer network of the covered manufacturer. The factors considered by the arbitrator shall include (1) the covered dealership's profitability in 2006, 2007, 2008, and 2009, (2) the covered manufacturer's overall business plan, (3) the covered dealership's current economic viability, (4) the covered dealership's satisfaction of the performance objectives established pursuant to the

applicable franchise agreement, (5) the demographic and geographic characteristics of the covered dealership's market territory, (6) the covered dealership's performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume or not assign the covered dealership's franchise agreement, and (7) the length of experience of the covered dealership. The arbitrator shall issue a written determination no later than 7 business days after the arbitrator determines that case has been fully submitted. At a minimum, the written determination shall include (1) a description of the covered dealership, (2) a clear statement indicating whether the franchise agreement at issue is to be renewed, continued, assigned or assumed by the covered manufacturer, (3) the key facts relied upon by the arbitrator in making the determination, and (4) an explanation of how the balance of economic interests supports the arbitrator's determination.

(e) The arbitrator shall be selected from the list of qualified arbitrators maintained by the Regional Office of the American Arbitration Association (AAA), in the Region where the dealership is located, by mutual agreement of the covered dealership and covered manufacturer. If agreement cannot be reached on a suitable arbitrator, the parties shall request AAA to select the arbitrator. There

will be no depositions in the proceedings, and discovery shall be limited to requests for documents specific to the covered dealership. The parties shall be responsible for their own expenses, fees, and costs, and shall share equally all other costs associated with the arbitration, such as arbitrator fees, meeting room charges, and administrative costs. The arbitration shall be conducted in the State where the covered dealership is located. Parties will have the option of conducting arbitration electronically and telephonically, by mutual agreement of both parties. The arbitrator shall not award compensatory, punitive, or exemplary damages to any party. If the arbitrator finds in favor of a covered dealership, the covered manufacturer shall as soon as practicable, but not later than 7 business days after receipt of the arbitrator's determination, provide the dealer a customary and usual letter of intent to enter into a sales and service agreement. After executing the sales and service agreement and successfully completing the operational prerequisites set forth therein, a covered dealership shall return to the covered manufacturer any financial compensation provided by the covered manufacturer in consideration of the covered manufacturer's initial determination to terminate, not renew, not assign or not assume the covered dealership's applicable franchise agreement.

(f) Any legally binding agreement resulting from a voluntary negotiation between a covered manufacturer and covered dealership(s) shall not be considered inconsistent with this provision and any covered dealership that is a party to such agreement shall forfeit the right to arbitration established by this provision.

(g) Notwithstanding the requirements of this provision, nothing herein shall prevent a covered manufacturer from lawfully terminating a covered dealership in accordance with applicable State law.

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION
AUTOMOBILE INDUSTRY SPECIAL BINDING ARBITRATION PROGRAM

In the Matter of the Arbitration between:

Re: 72 532 01370 09
Rally Auto Group, Inc.
VS
General Motors, LLC

Written Determination of Arbitrator

I, the undersigned Arbitrator, having been designated pursuant to Section 747 of the Consolidated Appropriations Act of 2010 (Public Law 111-117) (the "Act"), enacted December 16, 2009, and having been duly sworn and having heard the proofs and allegations of the parties, do hereby make my Written Determination pursuant to the Act.

Background

The Act affords a "covered dealership" (as defined in Section 747(a)(2)) the right to challenge by binding arbitration the decision of a "covered manufacturer" (as defined in Section 747(a)(1)(A) and (B)) to terminate, or not to assign, renew or continue, the covered dealership's franchise agreement. This case was filed in accordance with the Act's provisions and I held hearings and heard testimony on May 13, 14 and 17, 2010. The parties submitted closing briefs on May 28, 2010, and the arbitrator determined that the case had been fully submitted as of May 28, 2010. Set forth below is my "written determination" (as provided for in 747(d) of the Act) of the issue to be decided under the Act, namely "whether or not the covered dealership should be added to the dealer network of the covered manufacturer." This Determination is being issued within seven (7) business days after the case was fully submitted.

I. The Parties

This proceeding concerns the automobile dealership known as Rally Auto Group located at 39012 Carriage Way Palmdale, California 93551 ("Rally"). Rally is a "covered dealership" as defined in Section 747(a)(2).

The "covered manufacturer" for purposes of this arbitration is General Motors, LLC, which is the current owner of the General Motors automobile manufacturing business. For convenience, the terms "General Motors" and "GM" is refers to both General Motors, LLC and General Motors Corporation.

II. Determination

Rally, the covered dealership described above in Section I, shall be added to the dealer network of General Motors, LLC, as to the Cadillac, Buick and GMC brands, in the manner provided for by the Act and in accordance with the terms and conditions of the Act.

Rally, the covered dealership described above in Section I, shall not be added to the dealer network of General Motors, LLC, with respect to the Chevrolet brand.

III. Key Facts Relied on by the Arbitrator in Making the Determination

In accordance with Section 747, I considered the following factors:

1. The covered dealership's profitability in 2006, 2007, 2008 and 2009;
2. The covered manufacturer's overall business plan;
3. The covered dealership's current economic viability;
4. The covered dealership's satisfaction of the performance objectives established pursuant to the applicable franchise agreement;
5. The demographic and geographic characteristics of the covered dealership's market territory;
6. The covered dealership's performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume or not assign the covered dealership's franchise agreement, and
7. The length of experience of the covered dealership.

In making the determination, I relied upon the following key facts:

General Motors' overall business plan includes reducing the total number of GM dealers nationwide, for the purpose of increasing the sales volumes ("throughput"), and thus the profitability, of the remaining GM dealers. The plan anticipates that this increase in dealer profitability will enable dealers to invest in better facilities, provide better customer service and, in general, compete more effectively with non-GM brands. General Motors' plan for the Palmdale area is to replace Rally as the Chevrolet dealer with a dealership owned and operated by Lou Gonzalez, operator of a successful Saturn dealership in Palmdale, which is being wound down with the elimination by GM of the

Saturn brand. GM plans to remove the Cadillac, Buick and GMC brands from the Palmdale GM dealership.

Rally has many years of experience as a General Motors dealer in Palmdale, California, and has been operated by its current owner/operator, Larry Mayle, for around 20 years. It currently sells the Cadillac, Buick, GMC and Chevrolet brands, from two facilities. Rally's facilities are adequate, and it is currently economically viable. It has sufficient working capital, availability of inventory financing and adequate staffing. During the years 2006 through 2009 Rally's operations were profitable. (See below for further discussion of 2008 profitability).

The Dealer Sales and Service Agreement between Rally and General Motors, which is the applicable franchise agreement, establishes a variety of performance objectives. (Ex. 1) In Article 5.1(f) of the agreement Rally agreed "to comply with the retail sales standards established by General Motors, as amended from time to time." Ex. 1, p. 6. Article 9 of the agreement ("Review of Dealer's Sales Performance") provides that "Satisfactory performance of Dealer's sales obligations under Article 5.1 requires Dealer to achieve a Retail Sales Index equal or greater than 100." Ex. 1, p. 17. The Retail Sales Index ("RSI") is the ratio of a dealer's reported retail sales to the sales necessary to equal the state average expected market share for the brand in question in the dealer's Area of Primary Responsibility ("APR"), adjusting for the popularity of various types and sizes of vehicles in the APR.

Rally did not achieve an RSI of 100 for any of its Chevrolet, Cadillac, Buick and GMC brands for the years 2006 through 2008, except for an RSI of 102.82 for Cadillac in 2008. These RSI scores ranked Rally low in sales performance as compared with other General Motors dealers. Rally's RSI has been particularly low for the Chevrolet brand. For Chevrolet its RSI in 2006 was 53.60, in 2007 was 50.36, and in 2008 was 53.07.

During 2006-2008, and in prior years, General Motors regularly communicated to Rally that General Motors considered Rally's levels of sales, particularly Chevrolet, to be inadequate and in need of substantial improvement. (Exs. 88, 201-203). After Rally received a "wind down" letter from General Motors in May 2009,[1] its sales performance improved, but that performance, under threat of termination, may not be as indicative of future performance as is Rally's historical sales record.

The demographic factors in Rally's area of principal responsibility ("APR") include high levels of unemployment, a working population that largely commutes "down the hill" to the greater Los Angeles area, with long commuting times. Rally contends that

---

[1] In its "wind down" letter to Rally dated May 14, 2009, GM advised Rally that it did not expect its contractual relationship with Rally to continue past October 2010. The wind down letter was followed by a Wind Down Agreement, allowing Rally to operate its GM dealership through October 31, 2010, but imposing certain restrictions, including inability of Rally to purchase new GM vehicles from GM.

these factors make the state-wide RSI scores misleading as applied to Rally. However, the comparatively high sales levels and RSI scores of the General Motors dealership in Victorville, California, a community comparable in many respects to Palmdale, tends to show that the RSI scores, based on General Motors' state-wide market share for various vehicle categories, provide a realistic measure for dealer sales performance in the Palmdale market The Palmdale Saturn dealership, operated by Lou Gonzalez, also has consistently achieved high RSI scores, again confirming that General Motors' RSI measure is applicable in Rally's market.

One of the criteria used by GM in deciding to terminate or not assign a dealer's franchise agreement is the Dealer Performance Score ("DPS"). This score measures the dealer's performance in four categories, which are weighted as follows:

Sales	50%
Customer Satisfaction Index	30%
Capitalization	10%
Profitability	10%

GM treats a score of 100 as average, and a score below 70 as poor performance. GM publicly stated that "Dealers with a score less than 70 received a wind-down agreement." (Ex. 26).

For 2008, GM calculated a DPS score for Rally of 55.27. (Ex. 31). The evidence showed, however, that this score depended on using an estimated LIFO adjustment to Rally's profits for 2008, rather than pre-LIFO profits or the actual, not estimated, LIFO profits. Using the latter two profit figures, Rally's DPS score was approximately 85.

IV. Balance of Economic Interests

The balance of economic interests of the covered dealership, of the covered manufacturer and of the public supports this determination for the reasons set forth below.

General Motors' decision to replace Rally as a Chevrolet dealer with a dealership operated by GM's former Saturn dealer in the Palmdale market is consistent with General Motors' plan to develop a stronger dealer network. Although there is no assurance of the new dealers' success, there is a reasonable basis, based on prior performance, for concluding that General Motors will obtain significantly stronger representation in the Palmdale area through that dealer than through Rally. The public will benefit by having a more active and aggressive Chevrolet sales effort in that market. In addition, there is some basis in Rally's customer satisfaction scores to conclude that customer service from the new Chevrolet dealer will be improved.

In the arbitrator's view, the balance of economic interests supports a determination that Rally should be able to retain its dealership for the Cadillac, Buick and GMC brands. Rally has a long history as a GM dealer, with millions of dollars invested in its business and facilities. Its sales performance has been somewhat better for these

brands than for the Chevrolet brand. The public will benefit by continuing to be able to purchase these brands in Palmdale, without having to drive at least 37 miles to the nearest dealer selling these brands. Because General Motors has decided to retain one GM dealer in the Palmdale area, it will likely not achieve the cost savings in that area that it expects to achieve by large-scale reductions in the number of its dealers. The evidence did not show a benefit to either GM or the public by eliminating these brands from the Palmdale market. Also, the evidence showed that there is some uncertainty about the physical capacity of the new Chevrolet dealer to provide parts and service for the full range of GM brands, and the public will benefit by the continued availability of parts and service from Rally.

VI. Costs

In accordance with the statute, the administrative fees and expenses, and the arbitrator's fees and expenses, shall be borne equally.

This Award is in full settlement of all claims submitted to this arbitration.

Date: June 8, 2010.

Richard Mainland, Arbitrator

EXHIBIT D

FERRUZZO & FERRUZZO, LLP
GREGORY J. FERRUZZO, SBN 165782
A Limited Liability Partnership,
including Professional Corporations
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone (949) 608-6900

MORGANSTERN, MAC ADAMS & DE VITO CO., L.P.A.
CHRISTOPHER M. DE VITO, OH BAR 47118
623 West Stain Clair Avenue
Cleveland, Ohio 44113
Telephone 9216) 687-1212
Attorneys for Petitioner, Rally Auto Group, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC.

Petitioner-Covered Dealership,

v.

GENERAL MOTORS, LLC

Respondent-Covered Manufacturer.

Case No. SACV10-01236 DOC (Ex)

PETITION TO MODIFY OR, ALTERNATIVELY, VACATE AN ARBITRATION AWARD

(Hearing and Oral Argument Requested)

The Petitioner-Covered Dealership Rally Auto Group, Inc. hereby submits this Petition to modify or, alternatively, to vacate a June 8, 2010 American Arbitration Association Award ("Award") involving Respondent-Covered Manufacturer, General Motors, LLC.

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

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FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

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FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

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FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

1. PARTIES

Petitioner Rally Auto Group, Inc. ("Rally") is an automobile dealership located at 39012 Carriage Way, Palmdale, California 93551. Rally is a "covered dealership," as defined in Section 747(a)(2) of the Consolidated Appropriations Act of 2010 (Public Law 111-117) (the "Act" or "Section 747"), enacted December 16, 2009. (A true and correct copy of the Act is attached as Exhibit "1" to Petitioner's Appendix of Authorities in Support of Petition to Modify / Vacate Arbitration Award and Request for Judicial Notice filed concurrently herewith [hereinafter "Appendix"].)

Respondent General Motors, LLC ("GM") is the current owner of the General Motors automobile manufacturing business and has its principal place of business in Detroit, Michigan. GM is a "covered manufacturer" as defined by Section 747(a)(1) of the Act.

2. JURISDICTION

While the Federal Arbitration Act's ("FAA") standards apply to this dispute, the FAA "bestow[s] no federal jurisdiction but rather require[s] an independent jurisdictional basis." *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 128 S.Ct. 1396, 1402, 170 L.Ed.2d 254 (2008), citing *Moses H. Cone*, 460 U.S. at 25 n. 32, 103 S.Ct. 927. The District Court, however, has federal question jurisdiction in this case under 27 U.S.C. § 1331 because it involves Section 747 of the Act, a law enacted by Congress (Public Law 111-117). (Appendix Exhibit "1.")

3. VENUE

Venue is proper in this Court, pursuant to 9 U.S.C.A. § 10 and § 11, because the Arbitration was conducted in the City of Orange and the Award at issue was made within the Court's geographical district.

4. BACKGROUND

A. Section 747 of the Consolidated Appropriations Act of 2010

The underlying arbitration proceeding was timely initiated pursuant to Section 747 of the Consolidated Appropriations Act of 2010 (Public Law 111-117, 123 Stat. 3034 (2009)) ("Section 747" or "Act" [Appendix Exhibit "1"). The genesis of Section 747 was the voluntary

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

petitions for bankruptcy filed by GM and Chrysler Corporation in the summer of 2009. Both GM and Chrysler previously applied for and received loans from the U.S. Government through the Troubled Asset Relief Program ("TARP") emergency funding program.

In the bankruptcy proceedings, both GM and Chrysler used a provision in the Bankruptcy Code to circumvent state franchise laws and summarily terminate or "wind down" (under the threat of termination) the franchises of over 2,000 independent auto dealers throughout the United States.

The House of Representatives, Committee on the Judiciary, held three (3) days of hearings on the "*Ramifications of Auto Industry Bankruptcies*." The stated purpose of the hearings was to review "the ramifications of auto bankruptcies and their effect on dealers and other issues" (emphasis added).[1] Other Congressional committees also conducted investigations, hearings, and gathered evidence regarding the manufacturer's "expedited bankruptcy proceedings."[2] Congress passed Section 747 of the Act because of the "bipartisanship concern in Congress of the mass closure of GM and Chrysler dealerships." (Emphasis added.) (*Id.*)

Recently, on July 19, 2009, the Office of the Special Inspector General for TARP ("SIGTARP") confirmed Congress' concerns in a report entitled, "***Factors Effecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks***." SIGTARP

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[1] House of Representatives, Subcommittee on Commercial and Administrative Law, Committee of the Judiciary, "***Ramifications of Auto Industry Bankruptcies (Part III)***," Serial No. 111-55, p. 1 (July 22, 2009) [Appendix Exhibit "7"; this subcommittee also held hearings on May 21, 2009, and July 21, 2009].

[2] June 3, 2009, State Senate Commerce Committee-Full Committee [Appendix Exhibit "6"]:
GM And Chrysler Dealership Closures: Protecting Dealers and Consumers;
June 10, 2009, Senate Banking Committee-Full Committee:
The State of the Domestic Automobile Industry: Impact of Federal Assistance;
June 12, 2009, House Energy and Commerce Committee-Subcommittee on Oversight, Investigations [Appendix Exhibit "5"]:
GM and Chrysler Dealership Closures and Restructuring;
September 16, 2009, House Small Business Committee-Subcommittee on Rural Development, Entrepreneurship and Trade:
The Role of Automobile Dealerships in Rural Economies.

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

concluded that its review "demonstrates that GM did not consistently follow its stated criteria" regarding the wind-down and termination of dealerships. (Appendix Exhibit "4," p. 30.) SIGTARP also found, just as troubling, the fact that GM had "little or no documentation of the decision-making process to terminate or retain dealerships... ." (*Id.*) The SIGTARP report also held that GM's acceleration of dealership closings "was not done with any explicit cost savings to the manufacturer in mind." (Appendix Exhibit "4," p. 29.)

It is precisely because of the arbitrary and capricious actions of GM and Chrysler in the Bankruptcy Court, after acceptance of Federal TARP loans, that Section 747 mandated that any manufacturer who accepted money from the Federal government had to provide the "specific criteria" for their rejection or wind-down of dealerships. The Act further required these American Arbitration Association ("AAA") proceedings, if a dealer made demand on the manufacturer, for a hearing before a neutral arbitrator to protect the parties' due process rights.

Section 747(b) states "[A] covered dealership that was not lawfully terminated under applicable state law on or before April 29, 2009, shall have the right to seek, through binding arbitration, continuation or reinstatement of a franchise agreement... ." The Petitioner herein was not lawfully terminated and sought arbitration. That legal prerequisite to these proceedings has been met.

Section 747(c) provides a legal and factual prerequisite upon the covered manufacturer (*i.e.* GM): provide the covered dealer, within thirty (30) days of the enactment of the Act, "specific criteria" as to why the dealer was terminated. The Congressional Record explained:

> "We intend this process to provide transparency and avoid the excessive costs and delays of litigation and discovery disputes. **The manufacturer should provide the respective covered dealers with each and every detail and criteria related to the evaluations of the dealership** and the decisions to terminate, not assign, not renew or discontinue. It is anticipated that the manufacturers will be cooperative and forthcoming and that all relevant information will be provided promptly."

Congressional Record-House, H14477 (December 10, 2009) [Appendix Exhibit "2"]. (Emphasis added.) There must be compliance with the legal and factual prerequisites in order to frame the issues at the arbitration hearing.

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

The Federal legislation is clear that there is a tri-partite balancing test, which must be performed by the arbitrator, regarding "the economic interest of the covered dealership, the economic interest of the covered manufacturer, and the economic interest of the public at large." Section 747 (d). The Act sets forth seven (7) required factors[3] that the arbitrator must consider **AND** "that the covered dealership may present any relevant information during the arbitration." Section 747(d). The law provides the remedy of "continuation," as well as "reinstatement," of the covered dealership's franchise agreement. Section 747(b) and (d).

Petitioner sought the remedy of "continuation" as well as "reinstatement" or "addition" of the covered dealership's franchise agreement pursuant to Section 747(b) and (e) of the Act.

B. Procedural and Factual History

On January 13, 2010, GM provided its required notice regarding the specific criteria which it used to issue the covered dealership (*i.e.* Rally) a wind-down agreement for its Chevrolet, Buick, Pontiac, GMC, and Cadillac brands. The only two (2) criteria listed were as follows: "2008 overall DPS total dealership score under 70" and "2008 overall RSI total dealership score under 70."

Rally timely commenced an arbitration with AAA. The matter was assigned AAA Case No. 72-532-01370-09 and Arbitrator Richard Mainland. Testimony was heard at the hearings held on May 13, 14, and 17, 2010. The parties submitted closing briefs on May 28, 2010.

Award in Favor of Rally

In this matter, the Arbitrator determined that Rally exceeded GM's publicly stated and sworn criteria (*i.e.* DPS) for terminating the covered dealership, based upon the Dealer

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[3] "The factors considered by the arbitrator shall include:
(1) the covered dealership's profitability in 2006, 2007, 2008, and 2009,
(2) the covered manufacturer's overall business plan,
(3) the covered dealership's current economic viability,
(4) the covered dealership's satisfaction of the performance objectives established pursuant to the applicable franchise agreement,
(5) the demographic and geographic characteristics of the covered dealership's market territory,
(6) the covered dealership's performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume or not assign the covered dealership's franchise agreement, and
(7) the length of experience of the covered dealership." (Section 747(d).)

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

Performance Score ("DPS") being below the 70 DPS index average. (Appendix Exhibit "8," p. 4.) The Award held that "Rally's DPS score was approximately 85." (Appendix Exhibit "8," p. 4.) Rally should not have been given a wind-down agreement based on GM's stated specific criteria. The Award's calculation of Rally's DPS score included all five (5) brands of the covered dealership: Chevrolet, Buick, Pontiac, GMC, and Cadillac. The Rally dealership has one (1) GM Business Activity Code for all five (5) GM brands. The Rally dealership has one GM Dealer Sales and Service Agreement which allows it to sell and service all five (5) brands. The Rally dealership submits one (1) Operating Statement to GM every month. The Rally dealership is evaluated by GM (*i.e.* profitability, working capital, sales and service satisfaction, etc.) as one (1) dealership. The Award should be modified and/or vacated regarding the *dicta* attempting to take the Chevrolet brand from the covered dealership's franchise and give it to a former Saturn dealer. (Appendix Exhibit "8," p. 4.)

Award Exceeds Powers and Scope of Authority

On June 8, 2010, AAA disseminated Arbitrator Richard Mainland's Award to the parties. (Appendix Exhibit "8".) The Award held that the covered dealership (*i.e.* Rally) "shall be added to the dealer networks of General Motors, LLC, as to the Cadillac, Buick and GMC brands, in the manner provided for by the Act and in accordance with the terms and conditions of the Act." (Appendix Exhibit "8," p. 2.) The Award also determined that the Chevrolet brand should be continued in Rally's market. However, the Arbitrator exceeded the scope of his authority by attempting to **remove** the Chevrolet brand from the "covered dealership" and give it to a non-party, a former Saturn dealer.[4]

Award on Matters Not Submitted

The Act does not allow for the splitting of brands within the "covered dealership" and only grants the Arbitrator the authority to "decide, based on that balancing, whether or not the ***covered dealership*** should be added to the dealer network of the covered manufacturer." (Emphasis added.) (Section 747(d).) The Act defined "covered dealership" as "an automobile

[4] Specifically, the Award stated that, with respect to the Chevrolet brand Rally "shall not be added to the dealer network of General Motors, LLC." (*Id.*)

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

dealership that had a franchise agreement for the sale and service of vehicles of ***a brand or brands*** with a covered manufacturer." (Emphasis added.) (Section 747(a)(2).) Congress intended that the "covered dealership," with or without all brands desired by the manufacturer, should be added back to the dealer network.[5] The Award held that Chevrolet should be added back to GM's dealer network. Thus, Rally should keep its Chevrolet brand.

Award's Remedy Beyond Authority Because Involves Non-Party

The Arbitrator exceeded the scope of the authority granted by Section 747(d) of the Act and it must be modified and/or vacated in part to conform with the Federal law. The Award impermissibly provides the remedy of taking Rally's Chevrolet brand and giving it to "GM's former Saturn dealer in the Palmdale market." (Appendix Exhibit "8," p. 4.) The Arbitrator did not have the authority to take a brand away from a covered dealership and give it to another dealer within the same marketplace. (Section 747(b) and (d).) To the contrary, since GM's overall business plan is to maintain representation and the Award determined that Rally and the Chevrolet brand should be continued in this market[6], the Arbitrator could not "cherry pick" one brand to take from Rally and give it to a former Saturn dealer. (*Id.*)

GM Agreed to Allow Original Dealer to Represent Needed Market

GM's CEO, Fritz Henderson, testified to Congress that "in the event we need to put a place—put a location back, one of the things that we committed to the Senate and I'll commit to you today, is that if we need to relocate a spot there, ***we will provide the existing operator the opportunity to actually look at that first.***"[7] (Emphasis added.) [Appendix Exhibit "5," p.

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[5] Congressional Record, H14478 (Appendix Exhibit "2").

[6] The Award found in favor of Rally to maintain its Buick, GMC, and Cadillac brands. (Appendix Exhibit "8," p. 2.) The Award also held that the Chevrolet brand should be maintained in this market. (Appendix Exhibit "8," p. 4.) The Award admitted that the "evidence showed that there is some uncertainty about the physical capacity of the new Chevrolet dealer to provide parts and service for the full range of GM brands, and the public will benefit by the continued availability of the parts and service from Rally." (Emphasis added.) (Appendix Exhibit "8," p. 5.) Thus, Rally's "covered dealership" facility is necessary to sell and service the Chevrolet brand in this market, in addition to the Buick, GMC, and Cadillac brands.

[7] June 12, 2009, House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, ***Hearing on GM and Chrysler Dealership Closures and***

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

66]

GM's CEO, Fritz Henderson, testified a second time and reiterated that "if we've made mistakes in the future, we've concluded we cannot take care of customers in the location and a point needs to be put back. ***We would go to whoever the individual was effected and give them the first chance to do that.***"[8] (Emphasis added.) [Appendix Exhibit "5," p. 66] The Award has determined that GM needs Chevrolet representation and Rally is entitled to continue representation as the "covered dealership" in the Palmdale market.

Judicial Estoppel

GM is judicially estopped from arguing a contrary position since it was successful during the bankruptcy proceeding and consummated its 363 sale. *Greer-Burger v. Temesi*, 116 Ohio St. 3de 324, 879 N.E. 2d 174, 2007-Ohio-6442, ¶ 25 ["Courts apply judicial estoppel in order to 'preserve the integrity of the courts by preserving a party from abusing the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposing to suit an exigency of the moment," quoting *Telendyne Industries, Inc. v. NLRB* (C.A. 6, 1990), 911 F. 2d 1214, 1218.]

GM achieved its 363 sale by promising to "***provide the existing operator the opportunity***" and "***give them the first chance***" to be added back to represent GM in the market. GM took a contrary position in this arbitration and through "undue means" obtained an arbitration award seeking to take the Chevrolet brand from Rally and give it to the former Saturn dealer in the same market. Similarly, GM achieved its 363 sale by representing to the bankruptcy court that it used an "objective" DPS index standard of below 70. GM took a contrary position during the arbitration and "cherry-picked" the Retail Sales Index ("RSI") from the DPS index and errantly calculated Rally's DPS score. GM is legally bound to follow its "objective" and "stated criteria" (i.e. DPS) regarding Rally, which requires continuation and/or reinstatement of the Chevrolet brand.

Restructuring (Appendix Exhibit "5").

[8] (*Id.*)

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

5. STATEMENT OF LAW

This matter involves the FAA (Federal Arbitration Act), which was Congressionally enacted and codified at 9 U.S.C.A. § 1, *et seq.*, as it applies to Petitioner Rally and Respondent GM's Federally mandated automobile industry special binding arbitration, pursuant to Section 747 of the Act. This matter seeks modification or, alternatively, partial vacation of a June 8, 2010 Award based upon 9 U.S.C.A. §§ 10 and 11.

Congress has limited the ability of Federal courts to review arbitration awards in order to promote the policy of favoring arbitration as an expeditious and relatively inexpensive means of resolving disputes. See 9 U.S.C. § 9; see also, *Schoenduve Corporation v. Lucent Technologies, Inc.*, 442 F. 3d 737, 731 (3rd Cir. 2006). However, the Circuit Courts[9] have cautioned that the district court is **neither "entitled nor encouraged simply to 'rubber stamp' the interpretations and decisions of arbitrators."**

Recently, the Eight District explained that the deference owed to arbitration awards "**is not the equivalent of a grant of limitless power.**" *Stark v. Sandberg, Phoenix & von Gontard, P.C.*, 381 F. 3d 793, 799 (8th Cir. 2004) (citation omitted) (emphasis added). Congress has enacted protections to (1) modify or correct and/or (2) vacate an arbitration award pursuant to certain enumerated circumstances. (9 U.S.C. §§ 10-11.) In this matter, valid grounds exist on the face of the arbitration Award to modify or, alternatively, partially vacate the June 8, 2010 Award.

A. Modifying or Correcting Arbitration Awards

The FAA delineates in 9 U.S.C. § 11 the District Court's power to modify or correct an arbitration award as follows:

> **§11. Same; modification or correction; grounds; order**
> In either of the following cases the United States court in and

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[9] *Matteson v. Rider Sys., Inc.*, 99 F3d 108, 113 (C.A. 3 1996) (citations omitted); *Michigan Family Resources, Inc. v. Service Employees International Union Local 517M*, 475 F.3d 746, 760 (C.A. 6 2007); *Metromedia Energy, Inc. v. Ensearch Energy Services*, 409 F.3d 574, 579 (C.A. 3 205); *Stark v. Sandberg, Phoenix & von Gontard, P.C.*, 381 F.3d 793, 799 (C.A. 8 2004); *Madison Hotel v. Hotel and Restaurant Employees, Local 25, AFL-CIO*, 128 F.3d 743, 749 (C.A. D.C. 1997); *Santa Fe Pacific Corporation v. Centra States, Southwest Areas Pension Fund*, 22 F.3d 725 (C.A. 7 1994).

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

> for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration -
>
> (a) Where there was an evident material miscalculation of figures or an **evident material mistake in the description** of any person, thing, or property referred to in the award.
>
> (b) Where the arbitrators have **awarded upon a matter not submitted** to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.
>
> **The order may modify and correct the award**, so as to effect the intent thereof **and promote justice between the parties.**" (Emphasis added.)

In this matter, Rally seeks modification and correction, pursuant to Section 11(a), based upon the material mistake in the description in the Award (*i.e.* "covered dealership" versus Chevrolet brand) and Section 11(b) based upon the fact that there was a determination upon a matter not submitted — or could have been submitted — regarding (1) the severing of a brand from the "covered dealership" franchise and (2) the remedy to take away the Chevrolet brand from Rally's Buick, Pontiac, GMC, and Cadillac covered dealership business and give it to a former Saturn dealer in the same marketplace. Both separate modification grounds, independently or together, justify - as a matter of law - correcting the Award to promote justice between the parties and promote the remedial purpose of Section 747.

Circuit Courts have held that a district court may modify an award and strike the portion of the award on a matter not submitted to the arbitrator for determination. *Off Shore Marine Towing v. MR23*, 412 F.3d 1254 (2005); *Totem Marine Tug and Barge, Inc. v. North American Towing, Inc.*, 607 F.2d 649 (1979). Similarly, an award which evidently mistakes the description of the matter being considered, also allows modification by a district court. Congress specifically explained through the plain language of the FAA, that any modification by a district court should "promote justice between the parties." (9 U.S.C. § 11.)

In this matter, justice requires modification to remove the Award's *dicta*, which inappropriately attempts to take the Chevrolet brand from the "covered dealership" and give it to a former Saturn dealers in the same marketplace. Since the Award determined that Chevrolet, Buick, GMC, and Cadillac should be maintained in the Palmdale market, the

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

"covered dealership" (*i.e.* Rally) has the right to continue with all four (4) brands. There exists an (1) evident material mistake in the description of the "covered dealership," which errantly excluded the Chevrolet brand, and (2) an award upon a matter not submitted or authorized for consideration, which gave the Chevrolet brand to a non-party and fashioned a remedy beyond the authority established in Section 747 of the Act. Once the Award determined that the Chevrolet brand should be continued in the local market and that Rally should be maintained, the arbitrator's responsibility was completed.

B. Vacating Arbitration Awards

The FAA also delineates the following four (4) bases for a District Court to vacate or partially vacate an arbitration award in 9 U.S.C. § 10, as follows:

> **§10. Same; vacation; grounds; rehearing**
> (a) In any of the following cases, the United States court in an for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration-
> (1) Where the award was procured by **corruption, fraud, or undue means**;
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them;
> (3) Where the **arbitrators were guilty of misconduct** in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; **or of any other misbehavior by which the rights of any party have been prejudiced;** or
> (4) Where the **arbitrators exceeded their powers, or so imperfectly executed them** that a mutual, final, and definite award upon the subject matter submitted was not made."

In this matter, Rally seeks partial vacation pursuant to Subsections (a)(1), (3), and (4). The subsections authorizing vacating an award, when an arbitrator is "guilty of misconduct" or "misbehavior" (*i.e.* 10(a)(3)) and/or "exceeded their powers" or "so imperfectly executed them" (*i.e.* 10(a)(4)), have collectively been described as the "manifest disregard" of the law by the United States Supreme Court. *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576, 585, 128 S.Ct. 1396, 1404 (2008).

Misconduct and Misbehavior, Section 10(a)(3)

The Arbitrator in this matter was guilty of misconduct, misbehavior, and exceeded his power (*i.e.* "manifest disregard") by (1) ruling on a matter not submitted for determination and

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Newport Beach, California 92660
Telephone: (949) 608-6900

(2) attempting to fashion a remedy not authorized by Section 747 of the Act. Specifically, the Award attempts to carve out and take one GM brand (*i.e.* Chevrolet) from the "covered dealership" and give it to a former Saturn dealer (*i.e.* non-party) within the same market territory. Section 747 of the Act clearly limits the Arbitrator's authority to only determine whether the "covered dealership" (*i.e.* not GM brands) should be continued, reinstated, or added "as a franchisee to the dealer network of the covered manufacturer in the geographical area where the covered dealership was located ... ." (Section 747(b).)

Exceeded and Imperfectly Executed Powers, Section 10(a)(4)

Furthermore, even if the Arbitrator could sever a brand from within the "covered dealership," which is not specifically authorized by the Act, the remedy fashioned in the Award exceeds the Arbitrator's power. Circuit Courts have held that arbitrators exceed or imperfectly execute their powers when they determine rights and obligations of individuals who are not parties to the arbitration proceedings. *NCR Corporation v. SAC-CO., Inc.*, 43 F.3d 1076, 1080 (6th Cir. 1995); *International Brotherhood of Electrical Workers, Local No. 265 v. O.K. Electric Co.*, 793 F.2d 214 (8th Cir. 1986); *Orion Shipping and Trading Company v. Eastern States Petroleum Corp. of Panama,* 312 F.2d 299 (2d Cir.), *cert. denied*, 373 U.S. 949, 83 S.Ct. 1679, 10 L.Ed. 2d 705 (1963). In this matter, the former Saturn dealer was awarded the franchise, even though it was not a party to the arbitration proceedings. The Award, as a matter of law, cannot determine the "rights and obligations" of a non-party regarding Rally's Chevrolet brand and its "covered dealership" facility in Palmdale.

Corruption, Fraud, and Undue Means by GM, Section 10(a)(1)

Subsection 10(a)(1) allows for the vacation of an arbitration award if it was procured by "corruption, fraud, or undue means." Respondent GM procured the Award in this matter through its "corruption, fraud and undue means." (1) GM publicly stated to Congress that if its dealer network plans determined a brand needed representation in a market, then the original dealership would have the opportunity to continue in the local market. (2) GM also publicly stated to Congress and represented to the bankruptcy court that it used an "objective" DPS standard to evaluate and determine which dealerships were terminated. **BOTH** of these

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

statements were contradicted by GM in this AAA matter and require partial vacation of the Award as a matter of law and equity as to the Chevrolet brand.

GM Promised to Allow the Original Dealer to Continue in a Needed Market

GM's CEO, Fritz Henderson, testified to Congress that "in the event we need to put a place—put a location back, one of the things that we committed to the Senate and I'll commit to you today, is that if we need to relocate a spot there, ***we will provide the existing operator the opportunity to actually look at that first.***"[10] (Emphasis added.) [Appendix Exhibit "5," p. 66.] GM's CEO, Fritz Henderson, testified a second time and reiterated that "if we've made mistakes in the future, we've concluded we cannot take care of customers in the location and a point needs to be put back. ***We would go to whoever the individual was effected and give them first chance to do that.***"[11] (Emphasis added.) [Appendix Exhibit "5," p. 66.]

The Award established that GM needs and plans on having Chevrolet representation in this market (Award, p. 4). However, the Award failed to apply this undisputed fact to this matter. GM needs Chevrolet representation in Palmdale and Rally is legally entitled to continue representation, as the operator and the "covered dealership," to follow GM's business plan and sworn statements to other tribunals (*i.e.* Bankruptcy Court, Congress).

GM Represented an "Objective" DPS Standard to Bankrupty Court and Congress

GM is judicially estopped from arguing a contrary position since it was successful during the bankruptcy proceeding and consummated its 363 sales of assets. *Greer-Burger v. Temesi*, 116 Ohio St. 3d 324, 8789 N.E. 3d 174, 2007-Ohio-6442. ¶ 25, quoting *Teledyne Industries, Inc. v. NLRB* (C.A. 6, 1990), 911 F.2d 1214, 1218. GM achieved its 363 sale by representing to the bankruptcy court and Congress that it used an "objective" DPS index standard of below 70 to terminate a covered dealership."[12] GM took a contrary position during the AAA

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[10] June 12, 2009, House Committee on Energey and Commerce, Subcommittee on Oversight and Investigations, ***Hearing on GM and Chrysler Dealership Closures and Restructuring*** (Appendix Exhibit "5").

[11] (*Id.*)

[12] GM Dealer Network analysis presented to House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations on June 12, 2009.

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

Arbitration and "cherry-picked" the RSI of the Chevrolet brand from the DPS as justification to take the Chevrolet brand from Rally and give it to a former Saturn dealer in the same market. GM also errantly calculated Rally's DPS score. The Award determined that properly taking into consideration legitimate LIFO accounting adjustments, Rally's DPS score was approximately 85 and that Rally should be maintained in the market. (Appendix Exhibit "8," p. 4.)

GM took a contrary position in this arbitration and through "undue means" obtained an arbitration award taking the Chevrolet brand because Rally allegedly had a low RSI Score. As a matter of law and equity, the Chevrolet brand must be continued with the "covered dealership" because (1) Rally exceeded GM's "objective" DPS standard and (2) GM plans on maintaining Chevrolet representation in this local market.

6. ARGUMENT OF LAW AND FACT

That portion of the Arbitration Award which allows GM to "replace" Rally as a Chevrolet dealership with another dealership in the Palmdale market exceeds the authority of the Arbitrator.

The Federal Arbitration Act allows the District Court to strike a portion of an Arbitrator's Award pertaining to an issue not subject to arbitration.

> "In sum, the Federal Arbitration Act allows a federal court to correct a technical error, to strike all or a portion of an award pertaining to an issue not at all subject to *998 arbitration, and to vacate an award that evidences affirmative misconduct in the arbitral process or the final result or that is completely irrational or exhibits a manifest disregard for the law."
>
> *Kyocera Corporation v. Prudential-Bache Trade Services* (2003) 34 F.3d 987 at 997-998.

Specifically, 9 USC §10(a)(4) permits the United States Court in the District wherein the award was made to vacate that part of an award where the Arbitrator exceeds their powers.

> "Section 10(a)(4) provides that an award may be vacated where the arbitrators exceeded their powers. Some circuits have specifically held that arbitrators exceed their powers when they determine rights and obligations of individuals who are not parties to the arbitration proceedings."

(http://energycommerce.house.gov/Press_111/20090612/gmnetworkanalysis.pdf) [Appendix Exhibit "3"]

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

NCR Corporation v. SAC-CO., Inc. (1995) 43 F.3d 1076 at 1080

The case of NCR Corporation (*supra*) arises out of a contract dispute between a manufacturer of electronic cash registers and one of its dealers. The arbitrator in that case awarded punitive damages against the manufacturer which were ordered to be paid to dealers who were not parties to the arbitration. In that case the District Court Magistrate vacated the punitive damages part of the arbitrator's award on the grounds that the arbitrator exceeded the scope of his authority by awarding the recovery of punitive damages payable to non-parties. In its decision, the Court of Appeals, Sixty Circuit, affirmed the judgment vacating part of the arbitrator's award which exceeded his authority. The present case is analogous in that the Arbitrator exceeded his authority by allowing GM "to replace Rally as a Chevrolet dealer with a dealership operated by GM's former Saturn dealer in the Palmdale market".

The case of *Schoenduve Corporation v. Lucent Technologies, Inc.* (2006) 442 F.3d 727 examined the scope of the arbitrator's authority to award relief. In its decision the Court considered the contract requiring arbitration and the parties' demand for arbitration to determine the scope of the arbitrator's authority. In the present case the scope of the Arbitrator's authority is very narrow and specific. The federal law, Section 747(d), which authorizes this arbitration proceeding states that "the arbitrator shall balance the economic interest of the covered dealership, the economic interest of the covered manufacturer, and the economic interest of the public at large **and shall decide, based on that balancing, whether or not the covered dealership should be added to the dealer network of the covered manufacturer"** (Emphasis added). This is the only determination which the arbitrator is authorized to make. This arbitration proceeding does not authorize the arbitrator to decide if Rally should be replaced as the Chevrolet dealer by another dealer in Palmdale.

As part of the chain of events which led to the enactment of Section 747, GM has asserted that it was critical to the reorganization of the company to reduce the size of its dealer network. The Business Plans which GM submitted to the government set forth a need to reduce the number of dealerships in its dealer network. The bankruptcy of GM allowed the company the ability to threaten the rejection of dealer franchise agreements and enabled GM to obtain the

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

"Wind-down Agreements" by which GM sought to reduce the size of its dealer body. The Answering Statement submitted by GM in the arbitration hearings, which were conducted under Section 747, details GM's plan to reduce the total number of dealers by eliminating those dealers who had inadequate facilities or undesirable locations. The issue to be determined by the arbitrator was whether Rally should be eliminated. The premise behind Section 747 and the scope of the arbitrator's authority was not whether underperforming dealers should be replaced with other dealers who GM believes might perform better. To include this determination in the arbitrator's decision improperly expands the scope of the arbitrator's authority and required modification.

Where an arbitrator includes in their award a form of relief or remedy not submitted to the arbitrator, the District Court may properly modify the award to exclude any such provision. In the case of *Offshore Marine Towing v. MR23* (2005) 412 F.3d 1254, the plaintiff, Offshore Marine Towing, Inc., sought to enforce a maritime salvage lien against a vessel. The District Court ordered the parties to arbitration. The arbitrator awarded plaintiff its claim under the lien and also awarded plaintiff the recovery of attorneys fees and costs. The owner of the vessel moved to modify or vacate the award of attorneys fees. The District Court modified the arbitration award to exclude the attorneys fees because attorneys fees may not be awarded in an *in rem* action for a salvage lien.

The Court of Appeals, Eleventh Circuit, affirmed the finding that

> "Because attorney's fees may not be awarded in an *in rem* action for a salvage lien and the issue of attorney's fees was not submitted to the arbitrator, the district court correctly modified the arbitration award in favor of OMT to exclude attorney's fees and costs".
>
> *Offshore Marine Towing Inc. (supra)* at page 1258.

In the present case, Petitioner Rally respectfully submits that the determination of whether or not the Chevrolet franchise at issue here might do better if the dealer (Rally) was replaced with another dealer (the former Saturn dealer) was not an issue properly before the Arbitrator and this determination exceeds the authority of the Arbitrator. (Section 747(d).)

In his Decision, the Arbitrator found that Rally had been a GM dealer for many years, that

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

its dealership facilities were adequate and that the business was economically viable. The Arbitrator determined that after taking into account the LIFO accounting conversion employed in the dealership's operating statements that the dealership's total DPS score was approximately 87, not 55 which GM used as justification for terminating the dealership. As a result, the Arbitrator concluded that the dealership should be reinstated. The arbitrator also determined that the public needed Chevrolet representation in the Palmdale market. The Arbitrator's inquiry should have ended there. Rally, as the covered dealership, should have been reinstated for all GM brands including Chevrolet.

7. CONCLUSION

Petitioner Rally seeks the remedy of modifying and partially vacating the AAA Award's *dicta* attempting to take the Chevrolet brand from the covered dealership and give it to a non-party, a former Saturn dealer, in the same local Palmdale market. Rally also requests any and all other equitable relief the Court deems appropriate and necessary, in order to effectuate its decision, including, but not limited to, maintaining the *status quo* until a final determination requiring GM to continue/add back the Chevrolet brand with Rally's existing and reinstated Buick, GMC, and Cadillac GM lines of new motor vehicles.

Dated: August 13, 2010

FERRUZZO & FERRUZZO, LLP

By: _____
Gregory J. Ferruzzo

MORGANSTERN, MAC ADAMS & DE VITO CO., LPA

By: s/ Christopher M. DeVito
Christopher M. DeVito

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)	DEFENDANTS
RALLY AUTO GROUP, INC.	GENERAL MOTORS, LLC
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)	Attorneys (If Known)
FERRUZZO & FERRUZZO LLP (949) 608-6900 3737 Birch Street, Suite 400 Newport Beach, California 92660 (SEE ATTACHED CO-COUNSEL INFORMATION)	

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☑ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☑ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☑ No ☐ MONEY DEMANDED IN COMPLAINT: $_____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

9 USC Sections 10 and 11 - Petition to Modify/Vacate Arbitration Award

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
☐ 400 State Reapportionment	☐ 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	☐ 510 Motions to Vacate Sentence Habeas Corpus	☐ 710 Fair Labor Standards Act
☐ 410 Antitrust	☐ 120 Marine	☐ 310 Airplane	☐ 370 Other Fraud	☐ 530 General	☐ 720 Labor/Mgmt. Relations
☐ 430 Banks and Banking	☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 371 Truth in Lending	☐ 535 Death Penalty	☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 450 Commerce/ICC Rates/etc.	☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 380 Other Personal Property Damage	☐ 540 Mandamus/ Other	☐ 740 Railway Labor Act
☐ 460 Deportation	☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Fed. Employers' Liability	☐ 385 Property Damage Product Liability	☐ 550 Civil Rights	☐ 790 Other Labor Litigation
☐ 470 Racketeer Influenced and Corrupt Organizations	☐ 151 Medicare Act	☐ 340 Marine	BANKRUPTCY	☐ 555 Prison Condition	☐ 791 Empl. Ret. Inc. Security Act
☐ 480 Consumer Credit	☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 422 Appeal 28 USC 158	FORFEITURE/ PENALTY	PROPERTY RIGHTS
☐ 490 Cable/Sat TV	☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 423 Withdrawal 28 USC 157	☐ 610 Agriculture	☐ 820 Copyrights
☐ 810 Selective Service	☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	CIVIL RIGHTS	☐ 620 Other Food & Drug	☐ 830 Patent
☐ 850 Securities/Commodities/ Exchange	☐ 190 Other Contract	☐ 360 Other Personal Injury	☐ 441 Voting	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 840 Trademark
☐ 875 Customer Challenge 12 USC 3410	☐ 195 Contract Product Liability	☐ 362 Personal Injury-Med Malpractice	☐ 442 Employment	☐ 630 Liquor Laws	SOCIAL SECURITY
☑ 890 Other Statutory Actions	☐ 196 Franchise	☐ 365 Personal Injury-Product Liability	☐ 443 Housing/Accommodations	☐ 640 R.R. & Truck	☐ 861 HIA (1395ff)
☐ 891 Agricultural Act	REAL PROPERTY	☐ 368 Asbestos Personal Injury Product Liability	☐ 444 Welfare	☐ 650 Airline Regs	☐ 862 Black Lung (923)
☐ 892 Economic Stabilization Act	☐ 210 Land Condemnation	IMMIGRATION	☐ 445 American with Disabilities - Employment	☐ 660 Occupational Safety /Health	☐ 863 DIWC/DIWW (405(g))
☐ 893 Environmental Matters	☐ 220 Foreclosure	☐ 462 Naturalization Application	☐ 446 American with Disabilities - Other	☐ 690 Other	☐ 864 SSID Title XVI
☐ 894 Energy Allocation Act	☐ 230 Rent Lease & Ejectment	☐ 463 Habeas Corpus-Alien Detainee	☐ 440 Other Civil Rights		☐ 865 RSI (405(g))
☐ 895 Freedom of Info. Act	☐ 240 Torts to Land	☐ 465 Other Immigration Actions			FEDERAL TAX SUITS
☐ 900 Appeal of Fee Determination Under Equal Access to Justice	☐ 245 Tort Product Liability				☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 950 Constitutionality of State Statutes	☐ 290 All Other Real Property				☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: **SACV10-01236 DOC (Ex)**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☑ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	City of Palmdale, County of Los Angeles

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	State of Michigan

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Orange	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date August 13, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

FERRUZZO & FERRUZZO, LLP
GREGORY J. FERRUZZO, SBN 165782
A Limited Liability Partnership,
including Professional Corporations
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone (949) 608-6900
MORGANSTERN, MAC ADAMS & DE VITO CO., L.P.A.
CHRISTOPHER M. DE VITO, OH BAR 47118
623 West Stain Clair Avenue
Cleveland, Ohio 44113
Telephone 9216) 687-1212
Attorneys for Petitioner, Rally Auto Group, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC. Petitioner-Covered Dealership, v. GENERAL MOTORS, LLC Respondent-Covered Manufacturer.	Case No. **PLAINTIFF COUNSEL INFORMATION**

FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge David O. Carter and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

SACV10- 1236 DOC (Ex)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[ ] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[X] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:
FERRUZZO & FERRUZZO LLP
Gregory J. Ferruzzo, SBN 165782
3737 Birch Street, Suite 400
Newport Beach, California 92660
(949) 608-6900 (SEE ATTACHED CO-COUNSEL INFORMATION)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC.

PLAINTIFF(S)

v.

GENERAL MOTORS, LLC

DEFENDANT(S).

CASE NUMBER

SACV10-01236 DOC (Ex)

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, FERRUZZO & FERRUZZO LLP *, whose address is 3737 Birch Street, Suite 400, Newport Beach, California 92660 *. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.
(* SEE ATTACHED CO-COUNSEL INFORMATION)

Clerk, U.S. District Court

Dated: AUG 13 2010

By: ROLLS ROYCE PASCHAL
Deputy Clerk

1144

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

FERRUZZO & FERRUZZO, LLP
GREGORY J. FERRUZZO, SBN 165782
A Limited Liability Partnership,
including Professional Corporations
3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone (949) 608-6900
MORGANSTERN, MAC ADAMS & DE VITO CO., L.P.A.
CHRISTOPHER M. DE VITO, OH BAR 47118
623 West Stain Clair Avenue
Cleveland, Ohio 44113
Telephone 9216) 687-1212
Attorneys for Petitioner, Rally Auto Group, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC. Petitioner-Covered Dealership, v. GENERAL MOTORS, LLC Respondent-Covered Manufacturer.	Case No. **PLAINTIFF COUNSEL INFORMATION**