

**HAHN & HESSEN LLP**

Mark T. Power, Esq.  
Alison M. Ladd, Esq.  
488 Madison Avenue  
New York, New York 10022  
Telephone: 212-478-7200  
Facsimile: 212-478-7400

*Attorneys for the Dallas Employee  
Retirement Fund*

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

In re:

MOTOR LIQUIDATION COMPANY, *et al.*,  
  
Debtors.

MOTOR LIQUIDATION COMPANY  
AVOIDANCE ACTION TRUST, by and through  
the Wilmington Trust Company, solely in its  
capacity as Trust Administrator and Trustee,

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A., individually  
and as Administrative Agent for various lenders  
party to the Term Loan Agreement described  
herein, *et al.*,

Defendants.

Chapter 11

Case No. 09-50026 (MG)

(Jointly Administered)

Adversary Proceeding

Case No. 09-00504 (MG)

**ANSWER OF DALLAS EMPLOYEE RETIREMENT FUND  
TO AMENDED COMPLAINT**

Dallas Employee Retirement Fund (“DERF”), by its undersigned attorneys, Hahn &  
Hessen LLP, hereby answers the Amended Complaint dated May 20, 2015 (the “Amended

Complaint)<sup>1</sup> of Plaintiff Motors Liquidation Company Avoidance Action Trust, by and through the Wilmington Trust Company, solely in its capacity as the trust administrator and trustee (the "Plaintiff" or "AAT").

**AS TO THE ALLEGED JURISDICTION AND VENUE**

1. The allegations set forth in Paragraph 1 of the Amended Complaint constitute legal conclusions as to which no response is required.

2. The allegations set forth in Paragraph 2 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Amended Complaint.

3. The allegations set forth in Paragraph 3 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Amended Complaint.

4. The allegations set forth in Paragraph 4 of the Amended Complaint do not contain any allegations against DERF, and as such no response is required. To the extent a response is required, in accordance with Local Bankruptcy Rule 7012-1, DERF does not consent to the entry of final orders or judgment by the Bankruptcy Court if it is determined that the Bankruptcy Court does not have jurisdiction to enter a final judgment or order consistent with Article III of the United States Constitution.

5. The allegations set forth in Paragraph 5 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required,

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Amended Complaint.

DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Amended Complaint.

**AS TO THE ALLEGED PARTIES**

6. Admits the allegations set forth in Paragraph 6 of the Amended Complaint.

7. Admits the allegations set forth in Paragraph 7 of the Amended Complaint.

8. The allegations set forth in Paragraph 8 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, DERF denies the allegations set forth in Paragraph 8 of the Amended Complaint and refers to the documents referenced therein for a complete and accurate statement of their contents.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Amended Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Amended Complaint.

12. The allegations set forth in Paragraph 12 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, DERF denies the allegations set forth in Paragraph 12 of the Amended Complaint, and refers to the Confirmation Order for a full and accurate recitation of its terms.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Amended Complaint.

14. The allegations set forth in Paragraph 14 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, DERF denies the allegations set forth in Paragraph 14 of the Amended Complaint, and refers to the DIP Order, the Confirmation Order, the Plan and the Trust Agreement for a full and accurate recitation of the terms set forth therein.

15. – 60. The allegations set forth in Paragraphs 15 through 60 of the Amended Complaint do not contain any allegations against DERF, and as such no response is required.

61. The allegations set forth in Paragraph 61 constitute a legal conclusion as to which no response is required. To the extent a response is required and to the extent that Paragraph 61 is meant to include DERF, DERF denies the allegations set forth in Paragraph 61, except admits that DERF received funds from JPMorgan in good faith in accordance with the terms of the Term Loan Agreement.

62. – 156. The allegations set forth in Paragraphs 62 through 156 of the Amended Complaint do not contain any allegations against DERF, and as such no response is required.

157. The allegations set forth in Paragraph 157 constitute a legal conclusion as to which no response is required. To the extent a response is required and to the extent that Paragraph 157 is meant to include DERF, DERF denies the allegations set forth in Paragraph 157, except admits that DERF received funds from JPMorgan in good faith in accordance with the terms of the Term Loan Agreement.

158.– 349. The allegations set forth in Paragraphs 158 through 349 of the Amended Complaint do not contain any allegations against DERF, and as such no response is required.

350. The allegations set forth in Paragraph 350 constitute a legal conclusion as to which no response is required. To the extent a response is required and to the extent that Paragraph 350 is meant to include DERF, DERF denies the allegations set forth in Paragraph 350, except admits that DERF received funds from JPMorgan in good faith in accordance with the terms of the Term Loan Agreement.

351. – 568. The allegations set forth in Paragraphs 351 through 568 of the Amended Complaint do not contain any allegations against DERF, and as such no response is required.

569. The allegations set forth in Paragraph 569 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 569 of the Amended Complaint.

570. The allegations set forth in Paragraph 570 of the Amended Complaint constitute legal conclusions as to which no response is required.

571. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 571 of the Amended Complaint, except admits that General Motors Corporation (“General Motors”), Saturn Corporation, and JPMorgan, as Administrative Agent, among others, entered into the Term Loan Agreement and refers to the Term Loan Agreement for the terms set forth therein.

572. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 572 of the Amended Complaint, and refers to the Term Loan Agreement for a full and accurate recitation of the terms set forth therein.

573. Denies the allegations set forth in Paragraph 573 of the Amended Complaint, except admits upon information and belief that there was an outstanding balance under the Term Loan Agreement as of the Petition Date.

574. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 574 of the Amended Complaint, except admits that the Debtors filed a motion on the Petition Date seeking, *inter alia*, authority from the Bankruptcy Court to obtain post-petition financing (the “DIP Motion”) [D.I. 574], and refers to the DIP Motion for the terms set forth therein.

575. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 575 of the Amended Complaint, and refers to the DIP Motion for a full and accurate recitation of the terms set forth therein.

576. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 576 of the Amended Complaint.

577. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 577 of the Amended Complaint, and refers to the DIP Order for a full and accurate recitation of the terms set forth therein.

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

DIP Order) and refers to the DIP Order for a full and accurate recitation of the terms set forth therein.

579. The allegations set forth in Paragraph 579 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, DERF denies the allegations set forth in Paragraph 579 of the Amended Complaint and refers to the DIP Order for a full and accurate recitation of the terms set forth therein.

580. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 580.

581. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 581 of the Amended Complaint, except admits that two UCC-1 financing statements were filed with the Delaware Secretary of State on November 30, 2006 in connection with the Term Loan Agreement (the “Term Loan UCC Financing Statements”), and refers to the Term Loan UCC Financing Statements for a full and accurate recitation of the terms set forth therein.

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

583. The allegations set forth in Paragraph 583 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 583 of the Amended Complaint.

584. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 584 of the Amended Complaint, except admits that on or about March 1, 2013, the Bankruptcy Court entered a *Decision on Cross Motions for Summary Judgment* (the “Decision”) [Adv. Pro. D.I. 71], a *Judgment* (the “Judgment”) [Adv. Pro. D.I. 73] and an *Order on Cross Motions for Summary Judgment* (the “Order”) [Adv. Pro. Dkt. No. 72] and refers to the Decision, the Judgment, and the Order for the terms set forth therein.

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

**AS AND FOR AN ANSWER  
TO THE FIRST CLAIM FOR RELIEF**

586. Repeats and re-alleges its responses to Paragraphs 1 through 585 of the Amended Complaint as if fully set forth herein.

587. The allegations set forth in Paragraph 587 of the Amended Complaint constitute legal conclusions as to which no response is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 587 of the Amended Complaint.

588. DERF denies the allegations set forth in Paragraph 588 of the Amended Complaint.

589. DERF denies the allegations set forth in Paragraph 589 of the Amended Complaint.



**AS AND FOR AN ANSWER  
TO THE SECOND CLAIM FOR RELIEF**

590. Repeats and re-alleges its responses to Paragraphs 1 through 589 of the Amended Complaint as if fully set forth herein.

591. Denies the allegations set forth in Paragraph 591 of the Amended Complaint.

592. The allegations set forth in Paragraph 592 of the Amended Complaint constitute legal conclusions as to which no response is required.

593. Denies the allegations set forth in Paragraph 593 of the Amended Complaint, and refers to the DIP Order for a full and accurate recitation of the terms set forth therein.

594. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 594 of the Amended Complaint.

595. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 595 of the Amended Complaint.

596. Denies the allegations set forth in Paragraph 596 of the Amended Complaint.

597. Denies the allegations set forth in Paragraph 597 of the Amended Complaint, and refers to the DIP Order for a full and accurate recitation of the terms set forth therein.

598. Denies the allegations set forth in Paragraph 598 of the Amended Complaint.

599. Denies the allegations set forth in Paragraph 599 of the Amended Complaint.

600. Denies the allegations set forth in Paragraph 600 of the Amended Complaint.

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

602. The allegations set forth in Paragraph 602 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 602 of the Amended Complaint.

603. Denies the allegations set forth in Paragraph 603 of the Amended Complaint.

**AS AND FOR AN ANSWER  
TO THE THIRD CLAIM FOR RELIEF**

604. Repeats and re-alleges its responses to Paragraphs 1 through 603 of the Amended Complaint as if fully set forth herein.

605. Denies the allegations set forth in Paragraph 605 of the Amended Complaint.

606. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 606 of the Amended Complaint.

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

608. The allegations set forth in Paragraph 608 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 608 of the Amended Complaint.

609. The allegations set forth in Paragraph 609 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 609 of the Amended Complaint.

610. The allegations set forth in Paragraph 610 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 610 of the Amended Complaint.

611. The allegations set forth in Paragraph 611 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 611 of the Amended Complaint.

612. Denies the allegations set forth in Paragraph 612 of the Amended Complaint.

613. Denies the allegations set forth in Paragraph 613 of the Amended Complaint.

614. The allegations set forth in Paragraph 614 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a

response is required, DERF denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 614 of the Amended Complaint.

615. Denies the allegations set forth in Paragraph 615 of the Amended Complaint.

**AS AND FOR AN ANSWER  
TO THE FOURTH CLAIM FOR RELIEF**

616. Repeats and re-alleges its responses to Paragraphs 1 through 615 of the Amended Complaint as if fully set forth herein.

617. Denies the allegations set forth in Paragraph 617 of the Amended Complaint. Denies the allegations set forth in Paragraph 618 of the Amended Complaint.

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

**AFFIRMATIVE DEFENSES**

In asserting the following additional defenses to Plaintiff's claims, DERF does not concede that the assertion of such defenses imposes any burden of proof or persuasion on DERF with respect thereto. Furthermore, DERF has not yet completed its investigation and, to the extent that investigation and/or discovery warrants, reserves the right to supplement, amend, or delete any or all of the following additional defenses prior to any trial of this action, and to assert any additional cross-claims, counterclaims, and third-party claims as they become known or available.

At the present time, DERF asserts that the claims alleged in the Amended Complaint against DERF are barred, in whole or in part, because:

**AS A FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED  
BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A SECOND AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRD AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A FOURTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A FIFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A SIXTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A SEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

The October 2008 Amendment is void and ineffective because JPMorgan, both in its capacity as administrative agent for the Synthetic Lease and in its capacity as Administrative Agent for the Term Loan, exceeded the extent of its authority as an agent of its principals, including DERF, when it permitted the Debtors to file the October 2008 Amendment.

**AS AN EIGHTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A NINTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

DERF was a secured party and had on the Petition Date a perfected security interest in certain assets of the Debtors pursuant to the Term Loan Agreement as set forth in multiple UCC-1 financing statements filed throughout the United States, including, but

not limited to the UCC-1 financing statement numbered 6416822 3 and filed on November 30, 2006 with the Secretary of State of Delaware listing Saturn Corporation as the “debtor” as well as multiple state fixture filings.

**AS AN ELEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWELFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A FOURTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A FIFTHTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION**

**ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A SIXTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A SEVENTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A EIGHTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A NINETEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

DERF was not properly served with the summons and complaint, nor served with



the summons and complaint within the period of time prescribed by law, and the Trustee's claims against DERF should therefore be dismissed for insufficient service of process.

**AS A TWENTIETH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS AN TWENTY-FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWENTY-SECOND AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWENTY-THIRD AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWENTY-FOURTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWENTY-FIFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWENTY-SIXTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWENTY-SEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF  
ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWENTY-EIGHTH AFFIRMATIVE DEFENSE TO THE CAUSES OF  
ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A TWENTY-NINTH AFFIRMATIVE DEFENSE TO THE CAUSES OF  
ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

entitled to interest from the date of each alleged transfer.

**AS A THIRTIETH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRTY-FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRTY-SECOND AFFIRMATIVE DEFENSE TO THE CAUSES OF  
ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRTY-THIRD AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRTY-FOURTH AFFIRMATIVE DEFENSE TO THE CAUSES OF**

**ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRTY-FIFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRTY-SIXTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES**

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

**AS A THIRTY-SEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

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

**AS A THIRTY-EIGHTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DERF ALLEGES:**

DERF hereby asserts all defenses available under federal law and under any applicable state law. Additional facts may be revealed in discovery or otherwise that

support additional defenses presently available, but unknown, to DERF. DERF therefore reserves its right to assert additional defenses in the event discovery or investigation reveals additional defenses or such additional defenses become apparent at trial.

*[The remainder of this page has been left intentionally blank]*

**WHEREFORE**, DERF respectfully requests that judgment be entered in its favor  
as follows:

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

Dated: New York, New York  
September 30, 2016

Respectfully submitted,

HAHN & HESSEN LLP

By:           /s/ Mark T. Power            
Mark T. Power, Esq.  
Alison M. Ladd, Esq.  
488 Madison Avenue  
New York, NY 10022  
Telephone: (212) 478-7200  
Facsimile: (212) 478-7400

*Attorneys for the Dallas Employee  
Retirement Fund*