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 and Debtors in Possession

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

-----X	
In re	: Chapter 11 Case No.
	: :
MOTORS LIQUIDATION COMPANY, et al.,	: 09-50026 (REG)
f/k/a General Motors Corp., et al.	: :
	: :
Debtors.	: (Jointly Administered)
-----	: :
NCR CORPORATION,	: :
	: :
Plaintiff	: :
	: :
v.	: Adv. Proc. No.
	: :
	: 11-09400 (REG)
	: :
MOTORS LIQUIDATION COMPANY,	: :
	: :
Defendant.	: :
-----X	: :

ANSWER

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

Defendant Motors Liquidation Company (f/k/a General Motors Corporation) (“**MLC**”) and its affiliated debtors, as debtors in possession (the

“Debtors”), hereby answer the Adversary Complaint (the “Complaint”) filed by NCR Corporation (“NCR” or “Plaintiff”) as follows:

PARTIES¹

1. The Debtors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.

2. The Debtors deny that they have offices located at 300 Renaissance Center, Detroit, MI 48265. The Debtors have offices located at 401 South Old Woodward Avenue, Suite 370, Birmingham, Michigan 48009. The remaining allegations in paragraph 2 of the Complaint are admitted.

3. The allegations in paragraph 3 of the Complaint are admitted.

JURISDICTION AND VENUE

4. The Debtors admit that jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1334(b).

5. The Debtors admit that venue of this adversary proceeding is proper in this district.

6. The Debtors admit that this is a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2).

VALLEYCREST LANDFILL

7. The allegations in paragraph 7 of the Complaint are admitted.

8. The allegations in paragraph 8 of the Complaint are admitted.

¹ This Answer contains the same section headings as those in the Complaint for ease of reference only. The Debtors do not admit, and expressly deny, any factual assertions contained in the section headings.

9. The allegations in paragraph 9 of the Complaint are admitted.
10. The allegations in paragraph 10 of the Complaint are admitted.
11. The allegations in paragraph 11 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Debtors are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

THE SETTLEMENT AGREEMENT AND CONSENT DECREE

12. The Debtors admit that on or about November 15, 2007, General Motors Corporation entered into a settlement agreement (the “**Settlement Agreement**”) with Plaintiff. The remainder of paragraph 12 of the Complaint purports to state the terms of the Settlement Agreement and as to these allegations, the Debtors state that the Settlement Agreement speaks for itself. Insofar as paragraph 12 contains legal conclusions regarding the terms of the Settlement Agreement, no response is required.

13. The allegations in paragraph 13 of the Complaint are admitted.

14. The allegations in paragraph 14 of the Complaint are admitted.

15. The Debtors admit that on November 21, 2007, Magistrate Judge Michael R. Merz entered a Judgment, Order, and Decree (the “**District Court JOD**”). The remainder of paragraph 15 of the Complaint purports to state the terms of the District Court JOD and as to these allegations, the Debtors state that the District Court JOD speaks for itself. Insofar as paragraph 15 contains legal conclusions regarding the terms of the District Court JOD, no response is required.

16. The Debtors admit that the District Court JOD was not appealed. The Debtors are without knowledge or information sufficient to form a belief as to the truth of

the allegations contained in the remainder of paragraph 16 of the Complaint, except to the extent the remaining allegations contain legal conclusions to which no response is required.

17. The Debtors deny that Plaintiff's overpayment remained in the possession of the Debtors at any relevant time. The remaining allegations of paragraph 17 of the Complaint purport to state the terms of the District Court JOD and as to these allegations, the Debtors state that the District Court JOD speaks for itself. Insofar as paragraph 17 contains legal conclusions regarding the terms of the District Court JOD, no response is required.

18. To the extent paragraph 18 of the Complaint purports to state the terms of the District Court JOD, the Debtors state that the District Court JOD speaks for itself. Insofar as paragraph 18 contains legal conclusions regarding the terms of the District Court JOD, no response is required. The Debtors are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of paragraph 18 of the Complaint.

19. The Debtors are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint.

20. Paragraph 20 of the Complaint purports to state the terms of the District Court JOD and as to these allegations, the Debtors state that the District Court JOD speaks for itself. Insofar as paragraph 20 contains legal conclusions regarding the terms of the District Court JOD, no response is required.

21. Paragraph 21 of the Complaint purports to state the terms of the District Court JOD and as to these allegations, the Debtors state that the District Court JOD speaks for itself.

22. The Debtors are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.

23. Paragraph 23 of the Complaint purports to state the terms of the Settlement Agreement and as to these allegations, the Debtors state that the Settlement Agreement speaks for itself. Insofar as paragraph 23 contains legal conclusions regarding the terms of the Settlement Agreement, no response is required.

MOTORS HOLDS NCR'S TOTAL OVERAGE AS TRUSTEE FOR NCR

24. Paragraph 24 of the Complaint purports to state the terms of the Settlement Agreement and the District Court JOD and as to these allegations, the Debtors state that the Settlement Agreement and the District Court JOD speak for themselves. Insofar as paragraph 24 contains legal conclusions regarding the terms of the Settlement Agreement or the District Court JOD, no response is required.

25. Paragraph 25 of the Complaint purports to state the terms of the Settlement Agreement and the District Court JOD and as to these allegations, the Debtors state that the Settlement Agreement and the District Court JOD speak for themselves. Insofar as paragraph 25 contains legal conclusions regarding the terms of the Settlement Agreement and the District Court JOD, no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

26. Paragraph 26 of the Complaint contains legal conclusions to which no response is required.

27. The Debtors deny the allegations contained in paragraph 27 of the Complaint, except to the extent that the allegations contained therein constitute a legal conclusion to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

28. The Debtors are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint.

29. The Debtors are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint.

EFFECT OF MOTORS'S BANKRUPTCY FILING

30. Paragraph 30 of the Complaint purports to state the terms of the Settlement Agreement and as to these allegations, the Debtors state that the Settlement Agreement speaks for itself. Insofar as paragraph 30 contains legal conclusions regarding the terms of the Settlement Agreement, no response is required.

31. Paragraph 31 of the Complaint contains legal conclusions to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

COUNT I: EXPRESS TRUST

32. The Debtors incorporate the foregoing answers as if fully set forth herein.

33. The Debtors deny the allegations contained in paragraph 33 of the Complaint except to the extent that the allegations contained therein constitute a legal

conclusion to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

34. The Debtors deny the allegations contained in paragraph 34 of the Complaint except to the extent that the allegations contained therein constitute a legal conclusion to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

ANSWER TO WHEREFORE: The Debtors deny that Plaintiff is entitled to the relief requested or to any relief and deny all allegations of the Complaint except as specifically admitted herein.

COUNT II: CONSTRUCTIVE TRUST

35. The Debtors incorporate the foregoing answers as if fully set forth herein.

36. Paragraph 36 of the Complaint contains legal conclusions to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

37. The Debtors deny the allegations contained in paragraph 37 of the Complaint except to the extent that the allegations contained therein constitute a legal conclusion to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

38. The Debtors deny the allegations contained in paragraph 38 of the Complaint except to the extent that the allegations contained therein constitute a legal conclusion to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

39. The Debtors deny the allegations contained in paragraph 39 of the Complaint except to the extent that the allegations contained therein constitute a legal conclusion to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

ANSWER TO WHEREFORE: The Debtors deny that Plaintiff is entitled to the relief requested or to any relief and deny all allegations of the Complaint except as specifically admitted herein.

COUNT III: ADMINISTRATIVE EXPENSE

40. The Debtors incorporate the foregoing answers as if fully set forth herein.

41. Paragraph 41 of the Complaint purports to state the terms of the Settlement Agreement and the District Court JOD and as to these allegations, the Debtors state that the Settlement Agreement and the District Court JOD speak for themselves. Insofar as paragraph 41 contains legal conclusions regarding the terms of the Settlement Agreement and the District Court JOD, no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

42. The Debtors deny the allegations contained in paragraph 42 of the Complaint except to the extent that the allegations contained therein constitute a legal conclusion to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

43. The Debtors deny the allegations contained in paragraph 43 of the Complaint except to the extent that the allegations contained therein constitute a legal

conclusion to which no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

44. Paragraph 44 of the Complaint purports to state the terms of the Settlement Agreement and as to these allegations, the Debtors state that the Settlement Agreement speaks for itself. Insofar as paragraph 44 contains legal conclusions regarding the terms of the Settlement Agreement, no response is required. To the extent the allegations in this paragraph seek to impose liability on the Debtors, they are specifically denied.

ANSWER TO WHEREFORE: The Debtors deny that Plaintiff is entitled to the relief requested or to any relief and deny all allegations of the Complaint except as specifically admitted herein.

GENERAL DENIAL

The Debtors deny each and every allegation of material fact not expressly admitted or qualified herein. The Debtors further reserve their right to amend and/or supplement this Answer as may be necessary.

DEFENSES

Without assuming the burden of proof where such burden properly rests with the Plaintiff and without waving and hereby expressly reserving the right to assert any and all such defenses at such time and to such extent as discovery and factual developments establish a basis therefore, the Debtors hereby assert, as defenses to claims asserted in Plaintiff's Complaint:

FIRST DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief can be granted. The failures of the Complaint include, among others, the failure to identify a trust *res* actually in the possession of the Debtors; the failure to identify any wrongful conduct on the part of the Debtors in acquiring or retaining any purported trust *res*, such that imposition of a constructive trust would be warranted; and the failure to allege that imposition of a constructive trust is a favored remedy in the context of a liquidating bankruptcy estate. *See, e.g., In re First Central Financial Corp.*, 377 F.3d 209, 218 (2d Cir. 2004) (noting that in cases involving a liquidating debtor, “constructive trusts are anathema to the equities of bankruptcy since they take from the estate, and thus directly from competing creditors, and not from the offending debtor”) (internal quotations and citations omitted).

SECOND DEFENSE

Plaintiff is not entitled to equitable relief because it has an adequate remedy at law and/or otherwise cannot meet the requirements for equitable relief.

THIRD DEFENSE

Plaintiff knowingly assumed the risk of not obtaining repayment of any amounts owed to it by General Motors Corporation as described in the Complaint and such was the cause of its alleged damages.

FOURTH DEFENSE

The Complaint is duplicative of proof of claim number 59913, filed by the Plaintiff in the Debtors’ chapter 11 cases pending before this Court.

FIFTH DEFENSE

Any injury to the Plaintiff is the result of its own conduct, the conduct of its agent(s), and/or the conduct of third parties.

The Debtors have not knowingly or intentionally waived any applicable defenses. The Debtors presently lack sufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses, and expressly reserve all rights with respect to all other defenses that may be revealed during the course of discovery.

COUNTERCLAIMS AND CROSS-CLAIMS

The Debtors assert and expressly reserve all rights with respect to all counterclaims or cross-claims that may be revealed during the course of discovery.

PRAYER FOR RELIEF

WHEREFORE, the Debtors respectfully request that Plaintiff's claims be dismissed with prejudice and that the Debtors be awarded the costs of defending this action and such other relief as this Court determines is just and proper.

Dated: New York, New York
February 23, 2011

/s/ Joseph H. Smolinsky _____
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