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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No.: 09-50026 (MG) f/k/a General Motors Corp., *et al.*
Debtors.	:	(Jointly Administered)
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	:	Adversary Proceeding No. 09-00504 (MG)
Plaintiff, -against-	:	
JPMORGAN CHASE BANK, N.A. *et al,*	:	
Defendants.	:	

ANSWER OF BTG PACTUAL CHILE S.A. ADMINISTRADORA GENERAL DE FONDOS TO FIRST AMENDED ADVERSARY COMPLAINT FOR (1) AVOIDANCE OF UNPROTECTED LIEN, (2) AVOIDANCE AND RECOVERY OF PAYMENTS, AND (3) DISALLOWANCE OF CLAIMS BY DEFENDANTS

BTG Pactual Chile S.A. Administradora General de Fondos (formerly known as Celfin Capital S.A. Adm. General de Fondos para Ultra Fondo de Inversion) (hereinafter "Defendant" or "Cross-Claimant," depending on context), by its attorneys Beys Liston & Mobargha LLP, hereby answers (the "Answer") the *First Amended Adversary Complaint for (1) Avoidance of*

Unprotected Lien, (2) Avoidance and Recovery of Payments, and (3) Disallowance of Claims by Defendants, dated May 20, 2015 (the "Amended Complaint"), of Plaintiff Motors Liquidation Company Avoidance Action Trust (the "AAT") as follows:

JURISDICTION AND VENUE

1. States that the allegations in Paragraph 1 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Amended Complaint.

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

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

4. States that the allegations in Paragraph 4 of the Amended Complaint constitute a statement of the AAC to which no response is required. To the extent that a response is required pursuant to Rule 7012-1 of the Local Bankruptcy Rules for the Southern District of New York, Defendant states that it does not, at this time, consent to 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; however, Defendant reserves the right to consent at a later date.

5. States that the allegations in Paragraph 5 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Amended Complaint.

6. Admits the allegations of Paragraph 6 of the Amended Complaint.

7. Admits the allegations of Paragraph 7 of the Amended Complaint.

8. States that the allegations in Paragraph 8 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 8 of the Amended Complaint, except admits that the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties*, dated June 25, 2009 (the "DIP Order") provides the AAT with certain rights and refers to the DIP Order for the terns set forth therein.

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

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

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

12. States that the allegations in Paragraph 12 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required,

Defendant denies the allegations in Paragraph 12 of the Amended Complaint, except admits that the Bankruptcy Court entered an order confirming the Debtors' Second Amended Joint Chapter 11 Plan (the "Plan") and refers to the Plan for the terms set forth therein.

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

14. States that the allegations in Paragraph 14 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 14 of the Amended Complaint.

15. to 77. States that the allegations in Paragraphs 15 to 77 of the Amended Complaint concern defendants other than Defendant and thus no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 15 to 77 of the Amended Complaint.

78. Denied.

79. to 90. States that the allegations in Paragraphs 79 to 90 of the Amended Complaint concern defendants other than Defendant and thus no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 79 to 90 of the Amended Complaint.

91. Denied.

92. to 569. States that the allegations in Paragraphs 92 to 569 of the Amended Complaint concern defendants other than Defendant and thus no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 92 to 569 of the Amended Complaint.

570. Admits.

GENERAL ALLEGATIONS
The Term Loan Agreement

571. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 571 of the Amended Complaint, except admits that General Motors Corporation ("General Motors"), Saturn Corporation ("Saturn"), and JPMorgan, as Administrative Agent, 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 in Paragraph 572 of the Amended Complaint, except refers to the Term Loan Agreement for the terms set forth therein.

573. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 573 of the Amended Complaint.

THE DIP ORDER

574. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 574 of the Amended Complaint, except admits that the Debtors filed a motion on the Petition Date seeking, *inter alia*, authority from the Bankruptcy Court to obtain postpetition financing (the "DIP Motion") and refers to the DIP Motion for the terms set forth therein.

575. Denies the allegations of paragraph 575 of the Amended Complaint, except refers to the DIP Motion for the content therein.

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

577. States that the allegations in Paragraph 577 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required,

Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 577 of the Amended Complaint, except refers to the DIP Order for the content therein.

578. States that the allegations in Paragraph 578 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 578 of the Amended Complaint.

579. Denied.

The Lien(s) Securing the Term Loan Agreement

580. States that the allegations in Paragraph 580 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 580 of the Amended Complaint, except refers to the DIP Order for the content therein.

581. States that the allegations in Paragraph 581 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 581 of the Amended Complaint.

582. States that the allegations in Paragraph 582 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 582 of the Amended Complaint.

583. States that the allegations in Paragraph 583 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required,

Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 583 of the Amended Complaint.

584. Denies the allegations of paragraph 584 of the Amended Complaint, except admits that, on March 1, 2013, the Bankruptcy Court entered a decision, judgment, and order on the cross-motions for summary judgment filed by the AAT and JPMorgan and refers to the decision, judgment, and order for the terms set forth therein.

585. Denies the allegations of 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-asserts its answers to the allegations in paragraphs 1 through 585 of the Amended Complaint with the same force and effect as if fully set forth herein.

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

588. States that the allegations in Paragraph 588 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 588 of the Amended Complaint.

589. States that the allegations in Paragraph 589 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 589 of the Amended Complaint.

AS AND FOR AN ANSWER TO THE SECOND CLAIM FOR RELIEF

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

591. States that the allegations in Paragraph 591 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 591 of the Amended Complaint.

592. States that the allegations in Paragraph 592 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 592 of the Amended Complaint.

593. States that the allegations in Paragraph 593 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 593 of the Amended Complaint, except admits that the DIP Order authorized the Debtors to apply the proceeds of the DIP Credit Facility to repay amounts outstanding under the Term Loan Agreement and refers to the DIP Order for the terms set forth therein.

594. States that the allegations in Paragraph 594 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 594 of the Amended Complaint.

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

596. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 596 of the Amended Complaint.

597. States that the allegations in Paragraph 597 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 597 of the Amended Complaint, except refers to the DIP Order for the content therein.

598. States that the allegations in Paragraph 598 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 598 of the Amended Complaint.

599. States that the allegations in Paragraph 599 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 599 of the Amended Complaint.

600. States that the allegations in Paragraph 600 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 600 of the Amended Complaint.

601. States that the allegations in Paragraph 601 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 601 of the Amended Complaint.

602. States that the allegations in Paragraph 602 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 602 of the Amended Complaint.

603. States that the allegations in Paragraph 603 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 603 of the Amended Complaint.

AS AND FOR AN ANSWER TO THE THIRD CLAIM FOR RELIEF

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

605. States that the allegations in Paragraph 605 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 605 of the Amended Complaint.

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

607. States that the allegations in Paragraph 607 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 607 of the Amended Complaint.

608. States that the allegations in Paragraph 608 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 608 of the Amended Complaint.

609. States that the allegations in Paragraph 609 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 609 of the Amended Complaint.

610. States that the allegations in Paragraph 610 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 610 of the Amended Complaint.

611. States that the allegations in Paragraph 611 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 611 of the Amended Complaint.

612. States that the allegations in Paragraph 612 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 612 of the Amended Complaint.

613. States that the allegations in Paragraph 613 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 613 of the Amended Complaint.

614. States that the allegations in Paragraph 614 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 614 of the Amended Complaint.

615. States that the allegations in Paragraph 615 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 615 of the Amended Complaint.

AS AND FOR AN ANSWER TO THE FOURTH CLAIM FOR RELIEF

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

617. States that the allegations in Paragraph 617 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 617 of the Amended Complaint.

618. States that the allegations in Paragraph 618 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 618 of the Amended Complaint.

Defendant denies that the AAT is entitled to any of the relief requested in its eight-paragraph prayer for relief on pages 77 and 78 of the Amended Complaint.

AFFIRMATIVE DEFENSES

In asserting the following defenses to the Amended Complaint, Defendant does not concede that the assertion of such defenses imposes any burden of proof or persuasion on it with respect thereto, nor does Defendant assume the burden of proof or persuasion for any of the defenses set forth here or with respect to any matter as to which the AAT as Plaintiff has the burden. Further, Defendant reserves the right to supplement, amend, or delete any or all of the following affirmative defenses prior to any trial of this action to the extent that its ongoing investigation and/or discovery so warrant. Presently, Defendant asserts that the claims alleged in the Amended Complaint are barred, wholly or partially, because:

FIRST DEFENSE

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

SECOND DEFENSE

The service of process on Defendant was insufficient and the AAT's claims should therefore be dismissed for failure to serve properly Defendant.

THIRD DEFENSE

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

FOURTH DEFENSE

The claims asserted in the Amended Complaint against Defendant are barred by applicable statutes of limitations.

FIFTH DEFENSE

The Termination Statement is void and ineffective because JPMorgan, in its capacity as Administrative Agent for a syndicate of financial institutions on a different financing for General Motors (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 cause the Termination Statement to be filed.

SIXTH DEFENSE

The Termination Statement is void and ineffective because JPMorgan never obtained the consent of Defendant to cause the filing of the Termination Statement as required under the Term Loan Agreement.

SEVENTH DEFENSE

The Termination Statement 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 $1.5 billion term loan (the "Term Loan"), exceeded the extent of its authority as an agent of its principals when it caused the Termination Statement to be filed.

EIGHTH DEFENSE

The Termination Statement is void and ineffective because JPMorgan did not authorize its filing.

NINTH DEFENSE

The unauthorized and ineffective filing of the Termination Statement did not waive or terminate the security interests that Defendant may have had in certain assets of the Debtors pursuant to the Term Loan Agreement and the Term Loan UCC Financing Statements.

TENTH DEFENSE

Plaintiff has alleged that Defendant was a Term Lender. Thus, Defendant was a secured party and beneficiary of perfected security interests on the Petition Date in certain assets of the Debtors pursuant to the Term Loan Agreement as set forth in multiple UCC-1 financing statements filed throughout the United States, including, but not limited to the UCC-1 financing statement numbered 6416822 3 and filed on November 30, 2006 with the Delaware Secretary of State listing Saturn as the "debtor."

ELEVENTH DEFENSE

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

TWELFTH DEFENSE

The AAT is estopped from bringing the claims asserted in the Amended Complaint against Defendant.

THIRTEENTH DEFENSE

The claims asserted in the Amended Complaint against Defendant are barred by the doctrines of mistake, restitution, and unjust enrichment, which collectively or individually require reinstatement of the erroneously terminated financing statement.

FOURTEENTH DEFENSE

The Bankruptcy Court should find that the Debtors held the collateral under the Term Loan Agreement pursuant to a constructive trust for the benefit of the Term Lenders, including Defendant, and, therefore, that such collateral is excluded from the bankruptcy estate.

FIFTEENTH DEFENSE

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

SIXTEENTH DEFENSE

The claims asserted in the Amended Complaint are barred to the extent that Defendant is not a transferee from which the AAT may recover the value of an avoided transfer under section 550 of the Bankruptcy Code.

SEVENTEENTH DEFENSE

The claims asserted in the Amended Complaint are barred by the single satisfaction rule set forth in section 550(d) of the Bankruptcy Code.

EIGHTEENTH DEFENSE

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

NINETEENTH DEFENSE

The AAT lacks standing and authority to bring the claims alleged, and the claims did not survive the confirmation of the Debtors' chapter 11 plan.

TWENTIETH DEFENSE

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

TWENTY-FIRST DEFENSE

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

TWENTY-SECOND DEFENSE

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

TWENTY-THIRD DEFENSE

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

TWENTY-FOURTH DEFENSE

Pursuant to section 547(c)(2) of the Bankruptcy Code, the purported transfers sought from Defendant were (i) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and Defendant, (ii) made in the ordinary course of business or financial affairs of the Debtors and Defendant, and (iii) made according to ordinary business terms.

TWENTY-FIFTH DEFENSE

The claims asserted in the Amended Complaint against Defendant to avoid transfers under section 549 of the Bankruptcy Code are barred to the extent that such transfers were not property of the estate.

TWENTY-SIXTH DEFENSE

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

TWENTY-SEVENTH DEFENSE

Defendant 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 Defendant.

DEMAND FOR JURY TRIAL

Defendant 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.

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

A. Dismissing with prejudice the AAT's Amended Complaint in its entirety and on the merits;

B. Awarding Defendant its costs of defending this action, including reasonable attorneys' fees, costs, and disbursements; and

C. Awarding Defendant such other and further relief as this Court may deem just and proper.

CROSS-CLAIMS

Pursuant to Federal Rule of Civil Procedure 13(g), made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7013, asserts the following Cross-Claims against Defendant and Cross-Defendant JPMorgan Chase Bank, N.A. ("JPMorgan"). Cross-Claimant makes this Cross-Claim without waiving any of its defenses and nothing in this Cross-Claim should be deemed to constitute an admission of any aspect of the AAT's allegations.

PARTIES

1. Cross-Claimant is a Chilean company, with its principal place of business in Chile.

2. Cross-Claimant is a named Defendant in the Adversary Proceeding.

3. JPMorgan is a national banking association with its principal office in the State of Ohio.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1332, 1334, and 1367.

5. Venue is proper under 28 U.S.C. § 1409(a) because these Cross-Claims arise in and relate to the underlying adversary proceeding, because the parties to the Term Loan Agreement expressly consented to venue in this district, and because many of the events that give rise to the Cross-Claims took place within this district.

6. This adversary proceeding constitutes a "core" proceeding as defined in 28 U.S.C. § 157(b)(2)(A). To the extent that this or any other appropriate Court finds any part of this adversary proceeding, including any individual Cross-Claim, to be "non-core," or to the extent that 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, Cross-Claimant does not consent at this time to the entry of final orders and judgments by the Bankruptcy Court, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure and Rules 7008-1 and 7012-1 of the Local Bankruptcy Rules for the Southern District of New York; provided, however, that Cross-Claimant reserves its right to so consent at a later date.

FACTUAL ALLEGATIONS

A. Introduction

7. Cross-Claimant brings this Cross-Claim against JPMorgan on the basis that the Plaintiff may try to establish that Cross-Claimant is a Term Lender under the Term Loan Agreement. In the event that the Court does find that Cross-Claimant is a Term Lender, then Cross-Claimant will have a claim against JPMorgan. Cross-Claimant will also have a claim against JPMorgan if the Court does not find that Cross-Claimant is a Term Lender. Thus, Cross-Claimant pleads this Cross-Claim without waiving its defense that it is not a Term Lender under the Term Loan Agreement.

8. Cross-Claimant is a Defendant in this adversary proceeding solely due to the unauthorized and reckless acts and abdication of responsibility by JPMorgan. JPMorgan recklessly and with gross negligence caused the filing of an unauthorized UCC-3 termination statement purporting to terminate the Financing Statements that perfected the security interest that protected the Term Lenders in connection with the Term Loan. JPMorgan caused this filing in its capacity as an administrative agent for a *different* set of lenders and in connection with a transaction that was entirely separate from the Term Loan. JPMorgan's actions were taken wholly outside of its authority as Administrative Agent for Term Loan, in violation of the duties that JPMorgan owed to the Term Lenders with full knowledge or in reckless disregard of the fact

that that none of the conditions for filing such a termination statement was present.

9. The Term Lenders extended credit to General Motors based on the commitment and understanding that the Term Lenders would be protected by a perfected security interest in certain General Motors assets valued in excess of the amount needed to secure payment of the Term Loan. As Administrative Agent, JPMorgan undertook to serve as the Secured Party of Record for the Term Loan UCC Financing Statements filed to perfect the security interest.

10. In 2008, acting as administrative agent and secured party of record for an entirely different financing for General Motors (the "Synthetic Lease"), JPMorgan caused the filing of the Termination Statement that purported to terminate the Main Term Loan UCC-1, which protected a significant portion of the security interest in collateral securing the Term Loan. JPMorgan did so despite obvious red flags that the Termination Statement had nothing to do with any collateral underlying the Synthetic Lease, but instead related to the collateral for the Term Loan.

11. In so doing, JPMorgan violated a fundamental obligation as Administrative Agent and Secured Party of Record – namely, the obligation not to cause to be filed UCC-3 termination statements related to the collateral unless the conditions precedent to such filing had been satisfied. JPMorgan also deprived Cross-Claimant of a critical benefit to which it was entitled under the Term Loan Agreement – namely, the perfected security interest that would protect the collateral supporting its interest in the Term Loan. In so doing, JPMorgan exposed Cross-Claimant to the risk of potentially devastating losses.

12. Cross-Claimant is now exposed to that risk. General Motors' unsecured creditors filed the Adversary Proceeding naming the Term Lenders. The sole basis for the Adversary Proceeding is AAT's contention that JPMorgan's wrongful conduct destroyed the perfection of

the security interest that was designed to protect the Term Lenders, including Cross-Claimant.

13. Following its 2008 error, JPMorgan engaged in conduct calculated to serve its own interests at the expense of the Term Lenders. Among other things, by agreement with AAT, JPMorgan spent six-years litigating this case without the participation of the Term Lenders and while operating under a fundamental conflict of interest, litigating in its own best interests and contrary to the interests of the Term Lenders.

14. JPMorgan's misconduct should not provide a basis for liability on the part of Cross-Claimant. As described in its Answer above, Cross-Claimant disputes AAT's claims and denies that the filing of the Termination Statement was effective to destroy the perfection of a significant portion of the Term Loan security interest. But to the extent that Cross-Claimant is subject to any liability in the Adversary Proceeding, JPMorgan must hold it harmless. Cross-Claimant would not have been placed at risk of liability had it not been for JPMorgan's gross negligence, unauthorized acts, and breaches of duty. Accordingly, Cross-Claimant seeks a judgment that JPMorgan breached its duties, acted wholly outside of any authority that it was granted in connection with the Term Loan, and must hold Cross-Claimant harmless.

B. The Term Loan

15. The Term Loan provided $1.5 billion of essential financing to General Motors. Because of its size and risk profile, the Term Loan was syndicated to a large number of lenders. JPMorgan acted as arranger for the Term Loan, negotiating its terms and organizing the group of syndicated lenders. JPMorgan would not have been able to syndicate this Term Loan (and earn the substantial fees associated with that work) had it not been for the promise that syndicate members would be protected by a perfected first-priority security interest in collateral having a value far in excess of the amount of the loan.

16. Certain of the parties' rights and obligations are set out in two agreements relating to the Term Loan, each dated as of November 29, 2006: (i) the Term Loan Agreement; and (ii) a Collateral Agreement. Upon information and belief, JPMorgan and/or its representatives drafted both agreements, which were signed on behalf of JPMorgan by Richard W. Duker, a managing director at JPMorgan.

17. Any extension of credit to General Motors at the end of 2006 had to be undertaken with extreme caution. General Motors had incurred substantial financial losses, and there was widespread speculation that the automaker might file for bankruptcy protection. Absent a perfected security interest, any interest in properties pledged as collateral to secure repayment of the Term Loan could be jeopardized by a General Motors bankruptcy. It was critically important that the collateral supporting the Term Loan would be protected by a first-priority perfected security interest in substantially all of the United States machinery, equipment, and special tools of General Motors.

18. The Term Loan also included an express commitment that the collateral underlying the Term Loan would be protected at all times by a perfected, first-priority security interest. Specifically, Article II of the Collateral Agreement for the Term Loan reflected General Motors' grant to JPMorgan, for the benefit of the Secured Parties, of a first- priority security interest in a substantial portion of General Motors' assets, including all of General Motors' fixtures and equipment at 42 different facilities across the United States, as well as associated intangibles, documents, and proceeds (the "Collateral"). As required by Section 5.05 of the Term Loan Agreement, General Motors granted JPMorgan, for the benefit of the Term Lenders, a perfected security interest in the Collateral, including the filing of UCC financing statements.

19. The security interest created by the Collateral Agreement for the Term Loan was

perfected by the filing of 28 UCC-1 financing statements, the broadest of which was the Main Term Loan UCC-1. The Main Term Loan UCC-1 perfected the Term Lenders' security interest in equipment, fixtures and related property at 42 General Motors manufacturing facilities across the United States.

20. Under the Term Loan Agreement, JPMorgan accepted the appointment as Administrative Agent for the Term Lenders, with authority to take certain specified actions on their behalf. Separately, JPMorgan undertook to serve as Secured Party of Record on the Term Loan UCC Financing Statements (including the Main Term Loan UCC-1) for the benefit of all Secured Parties on the Term Loan, including Cross-Claimant.

21. Upon information and belief, Duker was the JPMorgan employee with primary responsibility for arranging the Term Loan and for ensuring the execution of JPMorgan's duties as Administrative Agent and Secured Party of Record for the Term Loan.

22. JPMorgan had no authority either to terminate, or to permit others to terminate, the Term Loan UCC Financing Statements for the Term Loan unless: (i) the Term Loan had been repaid in full; or (ii) the Term Lenders had consented in writing to the termination.

23. These limitations on JPMorgan's authority were central to the purpose and structure of the Term Loan. JPMorgan, as agent for the Term Lenders, had a fundamental duty not to take improper actions that would damage the Term Lenders' interests in connection with the Term Loan. This included a fundamental responsibility, before causing the filing of a termination statement, to read the statement and understand which security interests it would be releasing.

24. JPMorgan also had fundamental obligations: (i) not to take actions outside the scope of its authority as agent; (ii) to follow the instructions of its principals; (iii) promptly to

notify its principals if it breached either of the preceding duties, in order to give its principals an opportunity to mitigate or cure the consequences of the breach; (iv) not to act adversely to its principals with respect to the subject matter of the agency; (v) to act reasonably in carrying out its duties; and (vi) to act consistently with the covenant of good faith and fair dealing in the performance of the Term Loan agreements, including by not taking actions that would have the effect of destroying or injuring the rights of the Term Lenders to receive the benefits of the agreements.

25. JPMorgan also undertook to serve as the Secured Party of Record for the Term Loan UCC Financing Statements that were filed in order to perfect the security interests in the Collateral. All 28 UCC-1 financing statements, including the Main Term Loan UCC-1, named "JPMorgan Chase Bank, N.A. as Administrative Agent" as the Secured Party of Record. As was apparent from the face of the Main Term Loan UCC-1, the reference to JPMorgan as Secured Party of Record was to JPMorgan as "Agent" for the principals/lenders in the Term Loan. An annex to the Main Term Loan UCC-1 referenced, among other things, the Term Loan Agreement dated November 29, 2006.

26. As Secured Party of Record, JPMorgan had a fundamental obligation to refrain from taking wrongful actions that would have the effect of destroying the perfection of the security interests for which it was Secured Party of Record.

27. Cross-Claimant is alleged by the Plaintiff to be a Term Lender. As a Term Lender, Cross-Claimant would be an express third-party beneficiary of the Collateral Agreement and also was a principal to the agency relationship with JPMorgan.

28. JPMorgan's obligations under the Term Loan Agreement and the Collateral Agreement are valid and enforceable obligations.

29. Cross-Claimant has performed all conditions precedent to JPMorgan's obligations under the relevant agreements.

C. The Synthetic Lease

30. In 2001, five years before the Term Loan was issued, JPMorgan helped arrange the Synthetic Lease, which involved a $300 million sale and leaseback of real properties in various states.

31. The Chase Manhattan Bank ("Chase Manhattan") was named to serve as Administrative Agent for the Synthetic Lease. In or about 2001, JPMorgan & Co. merged with Chase Manhattan to form JPMorgan. Upon information and belief, JPMorgan took over Chase Manhattan's duties as Administrative Agent under the Synthetic Lease, and acted as Secured Party of Record for the Synthetic Lease.

32. The Synthetic Lease was unrelated to the Term Loan. It involved a different set of lenders on whose behalf Chase Manhattan and, later, JPMorgan, acted as Administrative Agent. The Synthetic Lease agreements did not purport to grant JPMorgan any authority to take actions in connection with that transaction that would affect any party's interests under the Term Loan. On the contrary, the Synthetic Lease documentation specifically limited JPMorgan's authority, including in connection with the termination of any financing statements, solely to properties and matters encompasses by the Synthetic Lease transaction.

33. General Motors' obligations under the Synthetic Lease were secured by liens on 12 specific General Motors properties in Michigan and Indiana that were identified in the Synthetic Lease agreements. This collateral consisted largely of real estate and was entirely separate from the assets that served as Collateral under the Term Loan.

34. In order to perfect the liens for the Synthetic Lease, JPMorgan filed UCC-1

financing statements with a variety of recording offices. All of the statements identified the secured party of record as: "JPMorgan Chase Bank, as Administrative Agent." Three UCC-1 financing statements were filed in Delaware. Two were dated April 12, 2002, and pertained to real property and related collateral in Marion County, Indiana. The third was filed in 2007 against Auto Facilities Real Estate Trust 2001-1, and related to parking lots in Detroit, Michigan. The phrase "as Administrative Agent" referred to JPMorgan in its capacity as Administrative Agent under the Synthetic Lease documents, and specifically as "Agent" for the principals/lenders in the Synthetic Lease.

35. Upon information and belief, Duker was the JPMorgan employee/officer with primary responsibility for the performance of JPMorgan's obligations under the Synthetic Lease.

D. JPMorgan Recklessly Terminates the Main Term Loan UCC-1

36. The Synthetic Lease was scheduled to mature on October 31, 2008. On or about October 1, 2008, General Motors informed Duker that General Motors intended to repay the Synthetic Lease in full. Duker was also personally familiar with the Term Loan, and knew that General Motors was not repaying the Term Loan at that time.

37. General Motors retained the law firm of Mayer Brown LLP ("Mayer Brown") in connection with the repayment of the Synthetic Lease. Upon information and belief, Mayer Brown was not retained to provide advice or representation to General Motors, JPMorgan, or any other party in connection with the Term Loan.

38. JPMorgan retained the law firm of Simpson Thacher & Bartlett LLP ("Simpson") in connection with the Synthetic Lease. Simpson was retained to, and did, represent JPMorgan in this transaction solely in JPMorgan's capacity as Administrative Agent under the Synthetic Lease. JPMorgan did not retain Simpson or seek Simpson's advice in connection with the Term

Loan, nor did Simpson provide any legal representation or advice to JPMorgan with respect to its obligations or actions under the Term Loan. JPMorgan did not delegate to Simpson any of JPMorgan's responsibilities as Administrative Agent under the Term Loan, nor did it delegate its responsibilities as Secured Party of Record for the Term Lenders.

39. General Motors and JPMorgan agreed that General Motors (including its lawyers) would prepare drafts of the documentation necessary to terminate the Synthetic Lease. In so doing, JPMorgan authorized General Motors to act as its agent in connection with the termination, which it knew and understood would be performed under its name as Secured Party of Record.

40. As Secured Party of Record for the Synthetic Lease transaction, JPMorgan was responsible for approving the termination of the relevant UCC-1 financing statements supporting the Synthetic Lease upon repayment of the debt involved in the transaction.

41. JPMorgan knew that if it caused an incorrect UCC-3 termination statement to be filed under its name, such as a termination statement relating to the Term Loan instead of the Synthetic Lease, such an error could result in devastating financial losses to the Term Lenders:

(a) JPMorgan knew that it was serving as Administrative Agent and Secured Party of Record for the Secured Parties named in the Synthetic Lease.

(b) JPMorgan knew that it also was designated as Administrative Agent and Secured Party of Record for the different set of Secured Parties (including Cross-Claimant) for the Term Loan.

(c) JPMorgan knew that UCC-1 financing statements had been filed with the Delaware Secretary of State in connection with both the Term Loan and the Synthetic Lease transactions.

(d) JPMorgan knew that the Term Loan UCC Financing Statements filed in Delaware identified the secured party of record as "JPMorgan Chase Bank, N.A., as Administrative Agent," meaning Administrative Agent in connection with the Term Loan.

(e) JPMorgan knew that the UCC-1 financing statements filed in Delaware in connection with the Synthetic Lease identified the secured party of record as "JPMorgan Chase Bank, as Administrative Agent," meaning Administrative Agent in connection with the Synthetic Lease.

(f) Upon information and belief, JPMorgan never informed Simpson of the risk created by its simultaneous service as an administrative agent for both the Synthetic Lease and the Term Loan.

(g) JPMorgan knew that, in the event of a General Motors bankruptcy, a termination statement purporting to terminate UCC-1 financing statements for certain of the collateral supporting the Term Loan might be used in any ensuing General Motors bankruptcy as a basis to disregard the Term Lenders' security interest in the Collateral supporting the Term Loan.

(h) JPMorgan also knew, in October 2008, that there was a significant risk that General Motors would file for bankruptcy protection in the imminent future. Indeed, on October 10, 2008, while General Motors was preparing the closing documents for the Synthetic Lease payoff, a representative of Wells Fargo emailed Duker, expressing concern about General Motors' financial condition, and inquiring into the status of the Collateral securing the Term Loan. The email noted that General Motors' stock had fallen "~84%" and that General Motors' bonds had "seen a similar decline." The Wells Fargo representative questioned whether the value of the Collateral was sufficient to ensure repayment of the Term Loan, and inquired whether the Term Lenders should seek to reduce their exposure to General Motors or demand

additional collateral. Duker responded that the collateral included "M&E/special tools" (referring, upon information and belief, to "machinery and equipment") and that "property is not part of the collateral." This exchange provided a vivid reminder to JPMorgan and Duker, if any reminder were needed, that it was imperative to protect the security interest that JPMorgan held as Secured Party of Record for the benefit of the Term Lenders.

42. Nevertheless, and despite the serious consequences of any error as set out above, neither Duker nor anyone else at JPMorgan took any steps at all to ensure that the actions taken in connection with the repayment of the Synthetic Lease did not adversely affect the security interests of the Term Lenders.

43. In fact, JPMorgan made a colossal error in connection with the Synthetic Lease termination. General Motors and Mayer Brown's drafts incorrectly identified the Main Term Loan UCC-1 as one of the financing statements to be terminated in connection with the payoff of the Synthetic Lease. Mayer Brown then sent to Simpson, in connection with the payoff of the Synthetic Lease, draft closing checklists that identified the Main Term Loan UCC-1 as one of the UCC-1 financing statements to be terminated at the time of the closing of the Synthetic Lease payoff. General Motors also sent draft closing documents to Simpson, including a draft of the improper Termination Statement. Simpson forwarded the checklists and the draft documents including the Termination Statement to JPMorgan (specifically, to Duker). General Motors also circulated a draft of a Synthetic Lease Escrow Agreement. The escrow agreement provided that, upon the delivery of the funds necessary to repay the Synthetic Lease, the escrow agent would permit General Motors to file various UCC-3 termination statements, including the improper Termination Statement.

44. Upon information and belief, despite its full awareness of the significant

consequences of the filing of a UCC-3, as well as the risks presented by its serving as administrative agents and secured parties of record on multiple credit facilities, at no point during this process did JPMorgan take any steps to determine for itself whether the draft documents provided by General Motors and its counsel had identified the correct financing statements for termination in connection with the Synthetic Lease. Nor, upon information and belief, did JPMorgan take any steps to ensure that no other financing statements were scheduled for termination, including the Main Term Loan UCC-1 that is at issue in this action. Nor, upon information and belief, did JPMorgan even take steps to determine what UCC-1 financing statements it was causing to be terminated. Because JPMorgan undertook to serve as Secured Party of Record on the UCC-1 financing statements, no UCC-3 termination statement could have been filed without JPMorgan's name on it. JPMorgan accordingly assumed a duty to read and understand at least the most basic elements of any UCC-3 statements filed in its name. Upon information and belief, that is the very reason that the UCC-3 termination statements were sent to JPMorgan. Instead of complying with this obligation, JPMorgan, in its capacity as Administrative Agent for the Synthetic Lease, caused the escrow agent to file UCC-3 termination statements without taking any steps to verify that that those UCC-3 termination statements related only to the Synthetic Lease that was being terminated.

45. On or about November 1, 2008, the Termination Statement was filed with the Delaware Secretary of State. The Termination Statement was filed at the same time as termination statements pertaining to the Synthetic Lease.

46. JPMorgan's actions did not constitute "authorization" within the meaning of the UCC. JPMorgan was not acting in its capacity as Administrative Agent for the Term Lenders, and therefore was not acting as Secured Party of Record under the Main Term Loan

UCC-1, when it caused the Termination Statement to be filed. In its capacity as Administrative Agent and Secured Party of Record for the Synthetic Lease, JPMorgan lacked power to authorize the filing of any termination statements related to the Term Loan. When JPMorgan caused the Termination Statement to be filed, it was acting beyond the authority delegated to it under the Term Loan Agreement, and contrary to express contractual obligations and instructions provided by its principals, the Term Lenders.

47. Nonetheless, AAT has contended that JPMorgan "authorized" the filing of the Termination Statement. To the extent that JPMorgan's actions constituted "authorization" or otherwise impaired the perfection offers Cross-Claimant security for the Term Loan, JPMorgan must indemnify Cross-Claimant and hold it harmless.

48. JPMorgan's actions with respect to the Termination Statement under the circumstances described above constituted recklessness and gross negligence because (among other reasons):

(a) JPMorgan knew that an erroneous filing could be used by General Motors' creditors in a General Motors bankruptcy in an attempt to disregard or displace the Term Lenders' security interests, and thus could seriously impair the Term Lenders' right to repayment.

(b) JPMorgan knew that at the same time it was acting as Administrative Agent for the benefit of the Synthetic Lease syndicate in connection with the termination of the Synthetic Lease, it had continuing responsibilities as Administrative Agent for the Term Lenders in connection with the Term Loan, and that General Motors was not at that time paying off the Term Loan.

(c) As of October 2008, JPMorgan knew that General Motors was experiencing

serious financial difficulties, that there was a significant likelihood that General Motors would file for bankruptcy protection, and that the risks associated with a filing mistake in that context would be particularly severe.

(d) Nevertheless, JPMorgan implemented no procedures and took no steps to ensure that the debtor-prepared termination statements filed in connection with the payoff of the Synthetic Lease actually pertained to the Synthetic Lease, and did not instead terminate the financing statements for other financings, including the Main Term Loan UCC-1.

(e) The costs of employing such procedures would have been trivial in comparison to the devastating potential consequences associated with an erroneous filing.

(f) JPMorgan also ignored red flags indicating that the draft UCC-3 termination statement related to Collateral for the Term Loan. On October 15, 2008, General Motors' lawyers sent JPMorgan's lawyers a draft closing checklist along with a collection of draft UCC filings, all of which pertained to real property except the draft Termination Statement. That same day, JPMorgan's lawyers forwarded the checklist and the draft documents to Duker at JPMorgan. Under the heading "Termination of UCCs (central, DE filings)," the draft checklist listed a "financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/2006)." This entry on the checklist made it obvious that an error had been committed.

(i) The Synthetic Lease was a *real estate* transaction, and the collateral securing that loan consisted of real estate and fixtures relating to that real estate. The references to "equipment" at "U.S. manufacturing facilities" – without any corresponding reference to real estate – were sufficient to alert JPMorgan to the fact that the draft termination statement did not relate to the collateral for the Synthetic Lease – and instead related to collateral that secured the

Term Loan. Duker, the person to whom the drafts were sent, was responsible for managing both the Synthetic Lease and the Term Loan, and was well aware of the difference between the collateral securing those two obligations.

(ii) The reference in the proposed Termination Statement to "file date 11/30/2006" – the day after the closing of the Term Loan – was another red flag for JPMorgan, which was well aware that the Synthetic Lease had closed in 2001, and that it was the Term Loan, and not the Synthetic Lease, that closed in November 2006.

(iii) The numbering by which the Term Loan financing statement was designated on the proposed Termination Statement was yet another red flag, because that numbering was different in form from the numbers on the Synthetic Lease financing statement.

(g) Despite all these warning signs, Duker and JPMorgan caused the filing of the Termination Statement.

(h) On October 15, 2008 – the *very same day* Duker received the draft checklist – Wells Fargo provided yet another reminder of the importance of preserving, for the benefit of the Term Lenders, the security interest in General Motors' machinery, equipment, and special tools. That day, the same Wells Fargo representative who had sent the October 10 email expressing concern about the machinery and equipment collateral securing the Term Loan forwarded that same email exchange once again to Duker, asking Duker to "give me a call to discuss; it's not urgent but nonetheless important." Yet neither Duker nor anybody else at JPMorgan took any steps to avoid endangering the Term Lenders' security interest.

(i) JPMorgan's conduct showed a reckless disregard for the interests of the Term Lenders that it was required to serve, and reflected a failure to take even slight care.

49. Furthermore, upon information and belief, JPMorgan – which held itself out as

the industry leader in the field of syndicated lending – simultaneously served as administrative agent and secured party of record for many different syndicated loan transactions. When it so served, JPMorgan had a practice of using identical or virtually identical language to identify itself on UCC filings. This situation created a grave risk of an erroneous filing. Having created this risk, JPMorgan had an obligation to adopt and follow procedures that would prevent such an error. JPMorgan either failed entirely to adopt such procedures, or failed to follow them when it caused the filing of the Termination Statement. In either case, its conduct evinced recklessness and gross negligence.

50. JPMorgan's actions described above were not lawfully taken.

E. JPMorgan Recklessly Terminates the Main Term Loan UCC-1

Acts and Omissions Prior to General Motors' Bankruptcy Filing

51. By virtue of its status as Agent for the Term Lenders, and by virtue of its responsibilities as Secured Party of Record for the Term Lenders, JPMorgan had a duty, not waived or diminished by the Term Loan Agreement, promptly to notify the principals of its transgression of authority and to take any necessary actions to assist the principals in remedying any injury caused by that transgression – including, in this case, by alerting Cross-Claimant to the need to file a new UCC-1 financing statement and then undertaking to file such a statement.

52. Despite this duty, JPMorgan failed promptly to alert Cross-Claimant of its error or otherwise take steps either to enable Cross-Claimant to take action to protect its interests as a result of JPMorgan's transgression, or to rectify the problem promptly itself.

53. Upon information and belief, in January 2009, General Motors informed JPMorgan that its financial situation had further deteriorated. General Motors told JPMorgan that its auditors were going to include a "going concern" qualification in connection with their

audit of General Motors' financial statements, and that General Motors therefore would not be in compliance with the Term Loan Agreement. A "going concern" qualification is necessary only when there is substantial doubt about a company's ability to avoid bankruptcy or otherwise continue its operations.

54. General Motors and JPMorgan negotiated an amendment to the Term Loan Agreement that, among other things, prevented General Motors from defaulting on the Term Loan due to the "going concern" qualification. For helping General Motors avoid default, JPMorgan was paid a $6 million fee.

55. Upon information and belief, once the General Motors bankruptcy became likely, it would have been standard practice for JPMorgan to review relevant UCC filings associated with General Motors' secured loans. Upon information and belief, JPMorgan did undertake to perform such a review of the UCC filings for the Term Loan in the first half of 2009. Even a rudimentary search would have uncovered the Termination Statement. Thus, upon information and belief, JPMorgan either (i) discovered the Termination Statement or indicia thereof and did nothing, or (ii) conducted the search in such a clumsy and reckless manner that it failed to identify its obvious error. Had it exercised even minimal care, JPMorgan could have sought to correct its error by filing (or demanding that General Motors file) a new UCC- 1 financing statement for the Term Loan; and/or filing (or demanding that General Motors file) a correction statement that would have informed record-searchers that the Termination Statement was wrongfully filed and unreliable.

56. Upon information and belief, JPMorgan discovered its error no later than June 15, 2009.

The Adversary Proceeding

57. General Motors filed for bankruptcy on June 1, 2009.

58. On June 30, 2009, the Term Lenders received all interest and principal outstanding under the Term Loan Agreement from the proceeds of the DIP Credit Facility (as defined in the DIP Order) approved by the Bankruptcy Court on June 25, 2009.

59. As initially filed with the Court on June 1, 2009, the proposed DIP Order contained a broad release of the Term Lenders. On or before June 25, 2009, the proposed release language was modified to reserve certain potential claims relating to the perfection of first-priority liens with respect to the Term Loan and other senior secured debt (the "Prepetition Secured Facilities"). Along with this modification, however, came new language stating that it was "understood that the respective administrative and collateral agents for the Prepetition Senior Facilities shall have no responsibility or liability for amounts paid to any Prepetition Senior Facilities Secured Parties and such agents shall be exculpated for any and all such liabilities, excluding only such funds as are retained by each such agent solely in its respective role as a lender." In other words, the modified proposed DIP Order purported to exculpate JPMorgan, in its capacity as Administrative Agent, from any claims by the Committee seeking to recover funds paid to the other Term Lenders. Upon information and belief, the modified release language was negotiated between JPMorgan and the Committee after JPMorgan disclosed to the Committee its role in the filing of the Termination Statement, and the quoted language was negotiated for the purpose of minimizing the risk of JPMorgan at the expense of the innocent Term Lenders. The modified proposed DIP Order was submitted to the Bankruptcy Court on June 25, 2009, without any disclosure to the Bankruptcy Court concerning the Termination Statement, JPMorgan's responsibility for the filing of the Termination Statement, or the fact that

the modified language was intended to limit the liabilities of the party at fault (JPMorgan) while reserving potential claims against the innocent Term Lenders.

60. On July 31, 2009, the Committee initiated this adversary proceeding against JPMorgan and the Term Lenders, including Cross-Claimant. The complaint alleged that, because of JPMorgan's error, the Term Lenders were not protected by a perfected security interest in the collateral covered by the Main Term Loan UCC-1. The complaint further alleged that the remaining collateral securing the Term Loan had negligible value, and that the Term Lenders should not have been treated as secured creditors under the DIP Order. The complaint demanded from certain of the Term Lenders a substantial portion of the $1.5 billion they received in repayment of the Term Loan. AAT served the complaint on JPMorgan in 2009, but did not start serving the Term Lenders until 2015.

61. Specifically, on or before October 6, 2009, following the filing of the initial complaint, JPMorgan sought and obtained an agreement with AAT to ask the Bankruptcy Court to allow a delay of the service of process on the Term Lenders.

62. Critically, in presenting this proposal to the Bankruptcy Court, JPMorgan's counsel made a point of telling the Bankruptcy Court that they were appearing for JPMorgan both individually "and as administrative agent." In response to this proposal, the Bankruptcy Court specifically asked JPMorgan's counsel whether JPMorgan had some of its own money in the Term Loan facility, and JPMorgan's counsel responded in the affirmative. The clear purpose of the Bankruptcy Court's inquiry was to obtain assurance that JPMorgan's interests were aligned with the Term Lenders who were unrepresented in the court, that JPMorgan would not act adversely to them, and therefore that the interests of the unserved parties would not be prejudiced by the delay in service.

63. JPMorgan's stated rationale for the requested delay in service was that the Term Lenders did not have discovery relevant to the events surrounding the filing of the Termination Statement, and therefore it was not necessary to join them at the discovery stage. But in 2010 JPMorgan and AAT requested further extensions of the deadline to complete service on the Term Lenders until after the Bankruptcy Court ruled on upcoming motions for summary judgment – extensions that went far beyond the original rationale offered to the Bankruptcy Court. By asking the Bankruptcy Court to allow JPMorgan and AAT to litigate potentially dispositive motions without the participation of the Term Lenders, JPMorgan implicitly represented that it would act to protect the interests of the Term Lenders in the litigation. As detailed below, it did not do so, but instead, laboring under a conflict of interest, sought to protect its own interests at the expense of the interests of the Term Lenders.

64. In 2013, following the Bankruptcy Court's order granting summary judgment to JPMorgan and shortly after the filing of a notice of appeal, AAT, with JPMorgan's consent, requested yet another extension of the deadline in which to complete service. By this point, upon information and belief, it was apparent to JPMorgan and its counsel that there was a reasonable prospect that the appellate process would extend more than six years from the 2008 date of the original breach of duty by JPMorgan, and that if the appellate ruling were to be adverse, continued delay in service might facilitate efforts by JPMorgan to argue that it had "run out the clock" on a statute of limitations. JPMorgan had a duty to disclose to the Bankruptcy Court that JPMorgan might use further extensions of time as a basis to argue that the statute of limitations had run on any cross- claims, and thus that further extensions could (if JPMorgan's argument prevailed) prejudice the Term Lenders.

65. Neither at the time of the original stipulation, nor on the other occasions over the

ensuing six years when JPMorgan and AAT sought further extensions of the time to serve the Term Lenders, did JPMorgan disclose to the Bankruptcy Court that JPMorgan might later seek to use the delay in service of the Term Lenders as a basis to insulate itself from liability to the Term Lenders for its own breaches of duty. Had JPMorgan disclosed the possibility that it would use the extensions in an effort to prejudice the Term Lenders or that it intended to act solely in its own best interests even when those interests conflicted with those of the absent Term Lenders, it is difficult to imagine that the Bankruptcy Court would have granted extensions.

66. But, in fact, JPMorgan engaged in a litigation strategy that was calculated to protect its own interests, even if that meant acting to the detriment of the Term Lenders:

(a) In litigating the effectiveness of the Termination Statement, JPMorgan failed to assert arguments and defenses that would have protected the Term Lenders but compromised JPMorgan's own position vis-a-vis the Term Lenders. For example, JPMorgan failed to assert as an independent basis for invalidity that JPMorgan, in causing the filing, acted wholly outside the authority granted to it by the Term Lenders and, indeed, in violation of the Term Loan Agreement and its duties as the agent of the Term Lenders.

(b) JPMorgan also agreed with AAT to the entry of a stipulation, buried in a scheduling order, that purported to limit the right of the Term Lenders to take discovery into the filing of the Termination Statement beyond that conducted by AAT and JPMorgan. Yet, in submitting this stipulation to the Bankruptcy Court for approval, JPMorgan did not disclose that its incentives for discovery were tainted by a conflict of interest: just as AAT did not have an interest to pursue discovery establishing that JPMorgan's acts in connection with the Termination Statement were unlawful,

unauthorized by the Term Lenders, and contrary to the duties that JPMorgan owed the Term Lenders, neither did JPMorgan. JPMorgan now has taken the position that this stipulation precludes Cross-Claimant from taking discovery concerning JPMorgan's misconduct. JPMorgan did not disclose to the Bankruptcy Court that it would attempt to use this stipulation as part of a strategy to avoid responsibility for its own wrongdoing.

(c) To the extent that JPMorgan did report on the adversary proceeding to some Term Lenders, it downplayed the risk to minimize its own transgressions of duty in the filing of the Termination Statement, and failed to disclose that it was acting under a conflict of interest. The Term Lenders, to the extent they were aware of the adversary proceeding at all, thus were given reason to believe that JPMorgan would put their ahead of its own interests or, at a minimum, clearly advise the Term Lenders that their interest conflicted with those of their putative agent. JPMorgan did neither, and instead used the few communications it had with some Term Lenders them into inaction. JPMorgan, for example, assured certain Term Lenders the purpose of the service extensions was to promote "efficiency," without disclosing that JPMorgan intended to use the passage of time caused by its own proposals to delay service to argue that any claims against JPMorgan were untimely.

(d) As the adversary proceeding now has unfolded, JPMorgan's assurances to the Bankruptcy Court and to certain Term Lenders were not borne out. JPMorgan has now made clear that it intends to try to use the period of delay that it secured from the Bankruptcy Court to support a statute of limitations defense against any cross-claims. Such an argument necessarily would fail because each and every cause of action asserted herein is timely under settled law. But even attempting such a bad-faith tactic is contrary

to JPMorgan's obligations to the Term Lenders and inconsistent with the implicit representation that JPMorgan made to the Bankruptcy Court in requesting the extensions of time in the first instance.

67. Since the Second Circuit's decision, JPMorgan has refused to take responsibility for the consequences of its actions and has denied that it has any responsibility to reimburse, indemnify, and hold harmless Cross-Claimant in this case.

FIRST CLAIM FOR RELIEF

Declaratory Relief

68. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 67, inclusive.

69. An actual and justiciable controversy now exists between the parties as to JPMorgan's obligation to reimburse, indemnify, and hold harmless Cross-Claimant for any liabilities or losses that Cross-Claimant incurs in the Adversary Proceeding.

70. As detailed above, Cross-Claimant contends that, by virtue of JPMorgan's wrongful conduct, JPMorgan is obligated to reimburse, indemnify, and hold Cross-Claimant harmless for any liabilities to AAT in the Adversary Proceeding.

71. Cross-Claimant desires a judicial determination of the rights of Cross-Claimant and JPMorgan's obligations.

SECOND CLAIM FOR RELIEF

Indemnification

72. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 71, inclusive.

73. If the Termination Statement is deemed effective as against Cross-Claimant, and

if Cross-Claimant incurs resulting liabilities to AAT, such liabilities are the proximate result of JPMorgan's breaches of duty and wrongful conduct.

74. The agent-principal relationship, the terms of the parties' agreements, and/or JPMorgan's wrongful conduct create an obligation for JPMorgan to indemnify Cross-Claimant for any liabilities or losses that Cross-Claimant incurs in the Adversary Proceeding, whether as a result of the breaches described above or as a result of any other breaches of duty in connection with the creation, perfection, and preservation of any security interest.

THIRD CLAIM FOR RELIEF

Breach of Contract

75. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 74, inclusive.

76. The Term Loan Agreement and the Collateral Agreement expressly prohibited JPMorgan from filing or authorizing others to file termination statements relating to the Collateral unless either: (i) the Term Loan had been repaid in full; or (ii) the Term Lenders had unanimously consented to the filing. Neither of these conditions had occurred when JPMorgan caused the Termination Statement to be filed.

77. To the extent Cross-Claimant incurs liabilities to AAT, any such losses are the natural, probable, and foreseeable consequences of JPMorgan's breach of contract, and JPMorgan should be required to reimburse Cross-Claimant for those losses.

FOURTH CLAIM FOR RELIEF

Breach of Obligations as Agent

78. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 77, inclusive.

79. By virtue of its status as agent and Secured Party of Record for the Term Lenders, JPMorgan assumed certain agency roles and duties. The Term Lenders entrusted JPMorgan with the security interests in the Collateral by permitting JPMorgan to be named as Secured Party of Record for the Term Loan.

80. The Term Lenders' express instructions precluded JPMorgan from filing or authorizing termination statements related to the Collateral unless: (i) the Term Loan had been repaid in full; or (ii) the Term Lenders consented to the filing. In October 2008, the Term Loan had not been repaid in full, and none of the Term Lenders (much less all of them) had authorized JPMorgan to file termination statements of any kind.

81. By causing the Termination Statement to be filed, JPMorgan acted wholly outside of its authority as agent and in direct contravention of the express instructions of its principals.

82. JPMorgan further breached its obligation to rectify its error promptly.

83. JPMorgan further breached its obligations to the Term Lenders through its other actions set out above, including but not limited to its conduct in 2009 and in the course of litigating the Adversary Proceeding.

84. To the extent that Cross-Claimant is held liable to AAT in this action, such losses are a direct and proximate result of JPMorgan's breaches of duty.

FIFTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

85. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 84, inclusive.

86. By virtue of its status as agent and Secured Party of Record for the Term Lenders,

JPMorgan assumed certain unwaivable fiduciary duties, including a duty not to act adversely to the Term Lenders or to destroy interests held by JPMorgan for their benefit.

87. By causing the Termination Statement to be filed, JPMorgan acted contrary to its fiduciary duties to the Term Lenders.

88. JPMorgan further breached its fiduciary duties to the Term Lenders through its other actions set out above, including but not limited to its conduct in 2009 and in the course of litigating the Adversary Proceeding.

89. To the extent that Cross-Claimant is held liable to AAT in this action, such losses are a direct and proximate result of JPMorgan's breaches of duty.

SIXTH CLAIM FOR RELIEF

Slander of Title

90. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 89, inclusive.

91. To the extent that JPMorgan authorized the filing of the Termination Statement, JPMorgan caused the recording of a document that falsely cast doubt on the valid security interest in the collateral that was held by JPMorgan for the benefit of the Term Lenders.

92. JPMorgan's authorization constituted a false communication that the Term Loan had been paid off, that the Term Lenders no longer had a security interest in the Collateral, and/or that the Term Lenders had "authorized" the release of the security interest or the termination of the perfection of a portion of the security interest. JPMorgan's communication was reasonably calculated to cause harm because JPMorgan made the communication either with knowledge that it was false, or recklessly or without regard to its consequences. The Second Circuit Decision,

which is binding as against JPMorgan, stated that "JPMorgan . . . knew that, upon the closing of the Synthetic Lease transaction, Mayer Brown was going to file the termination statement that identified the Main Term Loan UCC-1 for termination" and that "JPMorgan reviewed and assented to the filing of that statement."

93. If Cross-Claimant incurs any resulting liability to AAT, the full amount of such liability will constitute special damages that are the direct consequence of JPMorgan's wrongful conduct.

SEVENTH CLAIM FOR RELIEF

Injurious Falsehood

94. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 93, inclusive.

95. To the extent that JPMorgan authorized the filing of the Termination Statement, JPMorgan made a false communication about the Term Lenders' beneficially-owned security interest by representing that the Term Loan had been paid off, that the Term Lenders no longer had a security interest in the Collateral, and/or that the Term Lenders had "authorized" the release of the security interest or the termination of the perfection of a portion of the security interest. JPMorgan made the communication either with knowledge that it was false, or recklessly and without regard to its consequences. The Second Circuit Decision, which is binding as against JPMorgan, stated that "JPMorgan . . . knew that, upon the closing of the Synthetic Lease transaction, Mayer Brown was going to file the termination statement that identified the Main Term Loan UCC-1 for termination" and that "JPMorgan reviewed and assented to the filing of that statement."

96. A reasonable person would have anticipated that damage would flow from the false statement.

97. If Cross-Claimant incurs any resulting liability to AAT, the full amount of such liability will constitute special damages that are the direct consequence of JPMorgan's wrongful conduct.

EIGHTH CLAIM FOR RELIEF

Injury to Property

98. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 97, inclusive.

99. To the extent that JPMorgan authorized the filing of the Termination Statement, JPMorgan damaged the Term Lenders' property interests in the Collateral securing the Term Loan through an actionable wrong. JPMorgan did so in its capacity as Administrative Agent under the Synthetic Lease.

100. If Cross-Claimant incurs any resulting liability to AAT, such pecuniary losses will be a direct consequence of JPMorgan's wrongful conduct.

NINTH CLAIM FOR RELIEF

Negligence

101. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 100, inclusive.

102. By assuming the role of Secured Party of Record, JPMorgan voluntarily assumed a duty to handle the Term Lenders' security interests with due care.

103. By undertaking to permit General Motors to file termination statements, JPMorgan assumed a duty of care independent of its contractual obligations.

104. By causing the Termination Statement to be filed, JPMorgan breached those duties. To the extent that Cross-Claimant incurs any resulting liability to AAT, such losses are a direct and proximate result of JPMorgan's negligence.

TENTH CLAIM FOR RELIEF

Noncompliance with the UCC (Section 9-625)

105. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 104, inclusive.

106. When JPMorgan caused the Termination Statement to be filed, it was not acting in its capacity as Administrative Agent for the Term Loan. Rather, JPMorgan was acting wholly outside its authority under the Term Loan, and exclusively in its capacity as Administrative Agent for the Synthetic Lease.

107. JPMorgan, in its capacity as Administrative Agent for the Synthetic Lease, was not the Secured Party of Record for the Term Loan.

108. JPMorgan's actions as described above had the effect of causing a termination statement to be filed that was completely unauthorized by the relevant principals.

109. When JPMorgan, in its capacity as Administrative Agent for the Synthetic Lease, caused the filing of a termination statement relating to the Collateral for the Term Loan, JPMorgan failed to comply with UCC Section 9-509(d) because it was not acting in its capacity as the Secured Party of Record for the Term Loan. JPMorgan, in its capacity as Secured Party of Record for the Synthetic Lease, was a stranger to the Term Loan and was not permitted under the UCC to authorize a filing related to it.

110. JPMorgan's conduct may cause loss to the Term Lenders. To the extent that

Cross-Claimant incurs any liability to AAT, such losses are a direct and proximate result of JPMorgan's negligence.

ELEVENTH CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

111. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 110, inclusive.

112. Implicit in all of the parties' agreements relating to the Term Loan was a covenant to exercise good faith and fair dealing in the performance of the agreements. Encompassed within that covenant was an obligation that JPMorgan not take actions that would have the effect of destroying or injuring the rights of the Term Lenders to receive the fruits of the contract.

113. One of the central benefits of the Term Loan agreements from the standpoint of the Term Lenders was their right and expectation, in connection with their loan of $1.5 billion to a distressed entity such as General Motors, to the status of secured creditors under the terms of the Term Loan agreements. Among other things, the Term Lenders had a reasonable expectation that, in exchange for granting that loan, the Term Lenders would receive the status of secured creditors with a perfected, first-priority lien on billions of dollars' worth of General Motors' property. The Term Lenders also had a reasonable expectation that JPMorgan, in exercising its functions as Administrative Agent and Secured Party of Record, would not take action that would jeopardize the Term Lenders' status as secured creditors.

114. JPMorgan's actions as alleged above constituted a reckless disregard for the Term Lenders' rights to their benefits under the Term Loan Agreement, including their status as secured creditors. By these actions, JPMorgan breached the covenant of good faith and fair

dealing implied in the Term Loan agreements.

115. Following the improper filing of the Termination Statement, JPMorgan again breached the covenant of good faith and fair dealing through its additional actions alleged above, which had the effect of potentially destroying or injuring the Term Lenders' right to receive the benefits of the Term Loan agreements, including the benefit of maintaining their status as secured creditors as General Motors approached and entered bankruptcy and the right to the services of a faithful agent.

116. To the extent Cross-Claimant incurs liabilities to AAT, any such losses are the natural, probable, and foreseeable consequence of JPMorgan's breaches of the covenant of good faith and fair dealing, and JPMorgan should be required to reimburse Cross-Claimant for those losses.

TWELFTH CLAIM FOR RELIEF

Equitable Subordination

117. Cross-Claimant realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 116, inclusive.

118. JPMorgan has engaged in inequitable conduct, including the conduct described in these Cross-Claims.

119. JPMorgan's inequitable conduct has caused a direct and particularized injury to Cross-Claimant.

120. Under principles of equitable subordination, all claims that have been or may be asserted against the Debtors by, on behalf of, or for the benefit of JPMorgan in any capacity should be subordinated for purposes of distribution, pursuant to sections 510(c)(1) and 105(a) of

the Bankruptcy Code, to the claims of Cross-Claimant.

121. Equitable subordination as requested herein is consistent with the provisions and purposes of the Bankruptcy Code.

PRAYER FOR RELIEF

WHEREFORE, as to their Cross-Claims as alleged herein, Cross-Claimant respectfully prays for relief of the following:

A. For an order requiring JPMorgan to reimburse, indemnify, and hold harmless Cross-Claimant for any liabilities or losses it incurs to AAT in the Adversary Proceeding;

B. For an order declaring that JPMorgan is required to reimburse, indemnify, and hold harmless Cross-Claimant for any liabilities or losses it incurs to AAT in the Adversary Proceeding;

C. For costs of suit and attorney fees, to the extent permitted by law;

D. For pre- and post-judgment interest as authorized by law; and

E. For such other relief as the court may deem proper.

Dated: New York, New York
March 31, 2017

Respectfully submitted,

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