

KELLEY DRYE & WARREN LLP
John M. Callagy
Nicholas J. Panarella
Martin A. Krolewski
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800

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Reply Deadline: August 26, 2010
Hearing Date: October 21, 2010

Attorneys for Defendant JPMorgan Chase Bank, N.A.

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

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (REG)
Debtors.	:	(Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION,	:	Adversary Proceeding
Plaintiff,	:	Case No. 09-00504 (REG)
vs.	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for Various lenders party to the Term Loan Agreement described herein, <i>et al.</i> ,	:	
Defendants.	:	

**RESPONSE OF DEFENDANT JPMORGAN CHASE BANK, N.A. TO
PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Rule 7056-1(c) of the Local Rules for the United States Bankruptcy Court, Defendant JPMorgan Chase Bank, N.A. (“**JPMCB**”), by its counsel, Kelley Drye & Warren LLP, respectfully submits the following objections and responses to the Statement of

Undisputed Material Facts of Plaintiff the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (“**Committee’s Rule 7056-1 Statement**”).

GENERAL OBJECTIONS

JPMCB’s specific responses to Committee’s Rule 7056-1 Statement are subject to the following general objections:

1. The Committee’s Rule 7056-1 Statement contains statements that are unsupported by the evidence cited.
2. The Committee’s Rule 7056-1 Statement contains statements that are immaterial and not relevant to Plaintiff’s motion for partial summary judgment.
3. The Committee’s Rule 7056-1 Statement contains statements that cite to inadmissible evidence.
4. The Committee’s Rule 7056-1 Statement contains statements that are argumentative.
5. The Committee’s Rule 7056-1 Statement contains statements that are misleading, inaccurate or incomplete because of Plaintiff’s selective quotation of deposition testimony, documents and partial contractual provisions.

SPECIFIC OBJECTIONS AND RESPONSES

Statement No. 1: Among other parties, General Motors Corporation (“**Old GM**”), Saturn Corporation (“**Saturn**”), and JPMorgan Chase Bank, NA., as administrative agent (“**JPMorgan**”) and a lender, entered into a term loan agreement dated as of November 29, 2006 (the “**Term Loan Agreement**”).

Response No. 1: Undisputed.

Statement No. 2: Richard W. Duker (“**Duker**”), as managing director of JPMorgan, signed the Term Loan Agreement on behalf of JPMorgan. (*Id.* at 121).

Response No. 2: Undisputed that Richard W. Duker, as managing director of JPMCB, signed the Term Loan Agreement (as defined in the JPMCB Rule 7056-1 Statement at ¶ 10)¹ on behalf of JPMCB. Mr. Duker signed the Term Loan Agreement on behalf of JPMCB “as Agent and a Lender” as defined in the Term Loan Agreement. (Duker Aff. Ex. G at JPMCB-CSM-0000065.)² JPMCB refers the Court to the Term Loan Agreement for the complete and accurate terms contained therein. (Duker Aff. Ex. G.)

Statement No. 3: In connection with the Term Loan Agreement, Old GM, Saturn and JPMorgan entered into a collateral agreement dated as of November 29, 2006 (the “**Collateral Agreement**”).

Response No. 3: Undisputed.

Statement No. 4: Section 6.04 of the Collateral Agreement entitled “Authority of Agent” states that as between JPMorgan and Old GM, JPMorgan “shall be conclusively presumed to be acting . . . with full and valid authority so to act” and Old GM shall not “be under any obligation, or entitlement, to make any inquiry respecting such authority.” (*Id.* at 125).

Response No. 4: Disputed, except it is undisputed that Section 6.04 of the Term Loan Collateral Agreement (as defined in the JPMCB Rule 7056-1 Statement at ¶ 11) provides:

Each of the Grantors and the Agent acknowledges that the rights and responsibilities of the Agent under this Agreement with respect to any action taken by the Agent or the exercise or nonexercise by the Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Agent and the Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Agent and the Grantors, the Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

¹ “**JPMCB Rule 7056-1 Statement**” refers to the Rule 7056-1(b) Statement of Undisputed Material Facts of Defendant JPMorgan Chase Bank, N.A. In Support of Its Motion for Summary Judgment dated and filed with the Court on July 1, 2010. (Docket Entry 30.)

² “**Duker Aff.**” refers to the Richard W. Duker affidavit dated June 29, 2010 and filed with the Court on July 1, 2010 in support of JPMCB’s summary judgment motion. (Docket Entry 31.)

(Duker Aff. Ex. H at JPMCB-CSM-0000125.) As described in the JPMCB Rule 7056-1 Statement, however, other provisions of the Term Loan Collateral Agreement set forth that: (1) the Term Loan Collateral (as defined in the JPMCB Rule 7056-1 Statement at ¶ 12) could not be eliminated unless the Term Loan (as defined in the JPMCB Rule 7056-1 Statement at ¶ 9) was fully paid off; (2) General Motors Corporation (“**GM**”) and Saturn Corporation (“**Saturn**”) covenanted that they would maintain the perfection of the security interests in the Term Loan Collateral; and (3) the terms and provisions of the Term Loan Collateral Agreement could only be waived, amended, supplemented or otherwise modified in writing signed by all parties thereto in accordance with Section 10.01 of the Term Loan Agreement, which states that the Term Loan lenders’ perfected security interest in the Term Loan Collateral can not be released “without the written consent of each Lender.” (JPMCB Rule 7056-1 Statement at ¶¶ 16-17; Duker Aff. Ex. G at § 10.01 at JPMCB-CSM-0000052-53 and Ex. H at §§ 4.03, 7.01 and 7.13 at JPMCB-CSM-0000120, 125 and 128.) JPMCB refers the Court to the Term Loan Agreement and the Term Loan Collateral Agreement for the complete and accurate terms contained therein. (Duker Aff. Exs. G and H.)

Statement No. 5: Duker, as managing director of JPMorgan, signed the Collateral Agreement on behalf of JPMorgan. (*Id.* at 131).

Response No. 5: Undisputed that Mr. Duker, as managing director of JPMCB, signed the Term Loan Collateral Agreement on behalf of JPMCB “as Agent” as defined in the Term Loan Collateral Agreement. (Duker Aff. Exh. H at JPMCB-CSM-0000131.) JPMCB refers the Court to the Term Loan Collateral Agreement for the complete and accurate terms contained therein.

Statement No. 6: Duker has worked for JPMorgan and its predecessors for almost 25 years (Duker 8: 16-17), has been a managing director of JPMorgan since 2002 (Duker 5:4-6) and has been responsible for JPMorgan’s credit relationship with Old GM since 1999 (Duker 5:7-17).

Response No. 6: Undisputed that Mr. Duker has worked for JPMCB and its predecessors for approximately 25 years, has been a managing director at JPMCB since 2002 and was responsible for managing JPMCB's potential credit risk in connection with GM since 1999. (Duker Aff. at ¶¶ 2-3.) Disputes that Mr. Duker has been responsible for JPMCB's credit relationship with GM since 1999.

Statement No. 7: Duker is familiar with how UCC filings operate and understands the purpose of UCC financing statements and termination statements. (Duker 9:8-25).

Response No. 7: Undisputed that Mr. Duker is familiar with how Uniform Commercial Code ("UCC") filings operate and understood that a UCC financing statement was a document filed to protect JPMCB's "security interest and specific underlying collateral" and that a termination statement was "a document filed to unwind [JPMCB's] security interest." (Callagy Decl. Ex. 6 (Duker Tr.) at 9.)³ Disputes the Committee's inaccurate characterization that Mr. Duker understood the purpose of UCC financing statements and termination statements.

Statement No. 8: Under the Term Loan Agreement, certain lenders (the "**Term Loan Lenders**") advanced \$1.5 billion in loan proceeds (the "**Term Loan**") to certain of the debtors secured by a first-priority lien (the "**Lien**") on certain assets of Old GM. (*See generally* Collateral Agreement; Term Loan Agreement).

Response No. 8: Undisputed in part. The Term Loan was secured by a lien on collateral of GM perfected by the filing of multiple UCC-1 financing statements. (JPMCB Rule 7056-1 Statement at ¶¶ 14-15.) Specifically, on November 30, 2006, JPMCB caused the filing of two UCC-1 financing statements with the Delaware Secretary of State listing GM and Saturn, respectively, as the debtor and JPMCB, as Administrative Agent, as the secured party. (JPMCB Rule 7056-1 Statement at ¶ 15; Duker Aff. Ex. I.) JPMCB also caused the filing of twenty-six state fixture filings in the County Clerk's offices where the facilities containing Term Loan

³ "**Callagy Decl.**" refers to the John M. Callagy declaration dated and filed with the Court on July 1, 2010 in support of JPMCB's summary judgment motion. (Docket Entry 41.)

Collateral were located. (*Id.*; Duker Aff. Ex. J) The twenty-six state fixture filings were filed in counties located in Delaware, Indiana, Kansas, Louisiana, Michigan, New York, Ohio, Texas and Wisconsin. (*Id.*)

Statement No. 9: On November 30, 2006, a UCC-1 financing statement, filing # 64168084 (the “**Term Loan Financing Statement**”), was filed with the Delaware Secretary of State in connection with the collateral securing the Term Loan Agreement. (Duker 14:18-23).

Response No. 9: Undisputed that on November 30, 2006, a UCC-1 financing statement, filing number 6416808 4, was filed with the Delaware Secretary of State in connection with the Term Loan Agreement to perfect the Term Loan lenders’ security interest in the Term Loan Collateral. In addition, JPMCB caused the filing of another UCC-1 financing statement with the Delaware Secretary of State listing Saturn as the debtor and JPMCB, as administrative agent, as the secured party as well as twenty-six state fixture filings in the County Clerk’s offices where the facilities containing Term Loan Collateral were located to perfect the Term Loan lenders’ security interest in the Term Loan Collateral. (JPMCB Rule 7056-1 Statement at ¶ 15; Duker Aff. Exs. I and J.)

Statement No. 10: In October 2008, Duker, on behalf of JPMorgan, was involved in another transaction with Old GM involving the payoff of an earlier synthetic lease (the “**Lease Payoff**”). (Duker 17:3-6; 15:4-6).

Response No. 10: Undisputed.

Statement No. 11: The synthetic lease transaction, which was paid off in October 2008, involved a participation agreement and amendment thereto. (Duker 16: 13-15).

Response No. 11: Undisputed that the Synthetic Lease Transaction (as defined in the JPMCB Rule 7056-1 Statement at ¶ 1) was set forth in the Synthetic Lease Transaction Documents (as defined in the JPMCB Rule 7056-1 Statement at ¶ 2), as amended by the Synthetic Lease Transaction First Amendment and Agreement to the Participation Agreement dated as of January 6, 2003, together with all related agreements and documents, including but

not limited to, Annex A to the Participation Agreement: Rules of Usage and Definitions; the Synthetic Lease Transaction Lease between Auto Facilitates Real Estate Trust 2001-1, as Lessor, and GM, as Lessee, dated as of October 31, 2001; and twelve Short Form Memoranda of Lease. (Duker Aff. Exs. A-E.) JPMCB refers the Court to the Synthetic Lease Transaction Documents for the complete and accurate terms contained therein. (*Id.*) Further, undisputed that the amount owed under the Synthetic Lease Transaction was repaid on October 30, 2008. (Duker Aff. at ¶ 19.)

Statement No. 12: Both the participation agreement, dated as of October 31, 2001 between, among other parties, JPMorgan (f/k/a The Chase Manhattan Bank) and Old GM (the “**Participation Agreement**”), and the amendment thereto were signed by Duker on behalf of JPMorgan. (*Id.* at 907, 1017).

Response No. 12: Undisputed that Mr. Duker signed the Participation Agreement (as defined in the JPMCB Rule 7056-1 Statement at ¶ 2) and the Synthetic Lease Transaction First Amendment and Agreement to the Participation Agreement dated as of January 6, 2003 on behalf of JPMCB “as Administrative Agent” and “as a Backup Facility Bank.” (Duker Aff. Exs. A and E.) JPMCB refers the Court to the Participation Agreement and the Synthetic Lease Transaction First Amendment and Agreement to the Participation Agreement dated as of January 6, 2003 for the complete and accurate terms contained therein. (*Id.*)

Statement No. 13: Simpson Thacher & Bartlett LLP (“**Simpson Thacher**”) represented JPMorgan in connection with the synthetic lease transaction and the Lease Payoff. (Duker 17:8-14).

Response No. 13: Undisputed.

Statement No. 14: Mardi Merjian (“**Merjian**”) was the attorney at Simpson Thacher who handled the synthetic lease transaction and the Lease Payoff on JPMorgan’s behalf. (Merjian 9:5-10; 11:7-10).

Response No. 14: Undisputed in part. Simpson (as defined in the JPMCB Rule 7056-1 Statement at ¶ 5) represented JPMCB on individual transactions for which JPMCB has sought

legal advice. (Callagy Decl. Ex. 5 (Merjian Tr.) at 44; Exhibit 2 to the Supplemental Declaration of John M. Callagy dated August 5, 2010 and filed with the Court herewith in further support of JPMCB's motion for summary judgment and in opposition to the Committee's motion for partial summary judgment.)

Statement No. 15: Merjian has represented JPMorgan on a significant number of transactions since 1987. (Merjian 7:1-13).

Response No. 15: Undisputed.

Statement No. 16: Merjian's position with Simpson Thacher is that of counsel, and he has practiced as a real estate lawyer with Simpson Thacher since graduating from law school in 1987. (Merjian 4:8-5:8).

Response No. 16: Undisputed.

Statement No. 17: Merjian's work in the real estate department of Simpson Thacher involves UCC filings. (Merjian 5:13-16).

Response No. 17: Undisputed.

Statement No. 18: Duker was Merjian's client contact at JPMorgan with respect to the Lease Payoff. (Merjian 11:25-12:2).

Response No. 18: Undisputed.

Statement No. 19: Mayer Brown LLP ("**Mayer Brown**") represented Old GM, as lessee, in connection with the synthetic lease transaction (Gordon Affidavit ¶ 2) and the Lease Payoff. (Green 10:20-21).

Response No. 19: Undisputed.

Statement No. 20: Robert E. Gordon ("**Gordon**"), a partner at Mayer Brown, was responsible for the synthetic lease transaction (Gordon Affidavit ¶ 2) and supervised the Lease Payoff. (Green 50:2-7).

Response No. 20: Undisputed that Robert Gordon was a partner at Mayer Brown (as defined in the JPMCB Rule 7056-1 Statement at ¶ 5) who was responsible for the Synthetic Lease Transaction. Disputes that Mr. Gordon "supervised the Lease Payoff." Mr. Gordon spoke with Ryan Green, a Mayer Brown associate, at various points about the repayment of the amount

due under the Synthetic Lease Transaction. (Callagy Decl. Ex. 4 (Gordon Tr.) at 58.) Mr. Gordon did not have any involvement in the closing of the Synthetic Lease Transaction. (*Id.*)

Statement No. 21: Gordon has worked in the real estate group of Mayer Brown since graduating law school in 1979 and has been a partner since 1986. (Gordon 4:20-5:12).

Response No. 21: Undisputed.

Statement No. 22: In the fall of 2008, Gordon met with Ryan Green (“**Green**”), a Mayer Brown associate, to discuss the Lease Payoff. (Green 7:7-11).

Response No. 22: Undisputed.

Statement No. 23: Green graduated from law school in 2005 and has been an attorney in Mayer Brown’s real estate group since June 2007. (Green 4:25-5:20).

Response No. 23: Undisputed.

Statement No. 24: On October 1, 2008, Gordon asked Green to put together a checklist for the Lease Payoff.

Response No. 24: Undisputed.

Statement No. 25: In addition to Gordon and Green, Stewart Gonshorek, a Mayer Brown paralegal (“**Gonshorek**”), worked on the Lease Payoff. (Green 8:21-25).

Response No. 25: Undisputed that Mr. Green and Stewart Gonshorek, a Mayer Brown paralegal, worked on the repayment of the Synthetic Lease Transaction. Disputes that Mr. Gordon “worked on the Lease Payoff.” JPMCB refers to and incorporates its response to Paragraph 20 herein.

Statement No. 26: Green and Gonshorek prepared a closing checklist (Green 11:24-12:2) that Gordon reviewed and commented on. (Green 12:22-13:17).

Response No. 26: Undisputed that Mr. Green and Mr. Gonshorek prepared a draft of the Synthetic Lease Closing Checklist (as defined in the JPMCB Rule 7056-1 Statement at ¶ 36). Disputes that Mr. Gordon reviewed and commented on Synthetic Lease Closing Checklist. Mr. Gordon did not recall reviewing a draft of the checklist in October 2008; nor did Mr. Green

remember that Mr. Gordon reviewed a draft of the checklist. (Callagy Decl. Ex. 4 (Gordon Tr.) at 11; Ex. 2 (Green Tr.) at 13.)

Statement No. 27: The closing checklist contains a heading “General Documentation” below which it states, “Termination of UCCs” and describes three financing statements, including the related file number and date filed. (Fisher Declaration Exhibit K).

Response No. 27: Undisputed that the Synthetic Lease Closing Checklist among dozens of other entries, under section 5 entitled “General Documentation” states:

Termination of UCCs (central, DE filings) Blanket-type financing statements as to real Property and related collateral located in Marion County, Indiana (file number 2092532 5, file date 4/12/02 and file number 2092526 7, file date 4/12/02)) financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06).

(Callagy Decl. Ex. 15). JPMCB refers the Court to the Synthetic Lease Closing Checklist for the complete and accurate terms contained therein. (*Id.*)

Statement No. 28: In order to determine the financing statements for which termination statements should be prepared, a UCC search was performed by Michael Perlowski (“Perlowski”), a Mayer Brown paralegal, at Green’s request (Perlowski 5:16-17; 11:7-9), the results of which were reviewed and discussed among Perlowski, Green and Gonshorek. Perlowski, Green and Gonshorek all agreed on which UCC financing statements required termination statements. (Gonshorek 9:13-24; 11:19-25).

Response No. 28: Disputed. The three UCC-1 filing numbers listed on the Synthetic Lease Closing Checklist under section 5 were derived from a UCC search Mr. Green had requested that a Mayer Brown paralegal, Michael Perlowski, perform in order to identify UCC-1 financing statements filed against GM and in favor of JPMCB in Delaware. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 10-12; Ex. 2 (Green Tr.) at 9 and 21-22; Ex. 7.) Working from the results of a prior Mayer Brown search for UCC-1 financing statements recorded against GM, Mr. Perlowski identified several UCC-1 financing statements in response to Mr. Green’s request. (Callagy Decl. Exs. 8-10; Ex. 1 (Perlowski Tr.) at 12.) Mr. Perlowski was not aware of the specific

transaction on which Mr. Green was working. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 40.) Mr. Green and Mr. Gonshorek believed that all of the Delaware UCC-1 financing statements identified by Mr. Perlowski pertained to the Synthetic Lease Transaction, and that UCC-3 termination statements should therefore be prepared for each in connection with the repayment of the Synthetic Lease Transaction. (Callagy Decl. Ex. 2 (Green Tr.) at 86-89; Ex. 3 (Gonshorek Tr.) at 9-11 and 47-48.)

Statement No. 29: The third financing statement listed on the closing checklist under “Termination of UCCs” is the Term Loan Financing Statement, identified as “Financing Statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities recorded on 11.30.06 as File Number 64168084.” (Fisher Declaration Exhibit K at 4233).

Response No. 29: Disputed. The draft of the Synthetic Lease Closing Checklist did not refer to the Term Loan. The draft of the Synthetic Lease Closing Checklist was entitled:

CLOSING CHECKLIST
General Motors: Release of Properties from JPMorgan Chase Synthetic Lease
CLOSING DATE: October 31, 2008.

(Callagy Decl. Ex. 15.) The draft checklist, among dozens of other entries, under section 5 entitled “General Documentation,” stated:

Termination of UCCs (central, DE filings) Blanket-type financing statements as to real Property and related collateral located in Marion County, Indiana (file number 2092532 5, file date 4/12/02 and file number 2092526 7, file date 4/12/02)) financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06).

(*Id.*) None of the parties who received a draft of the Synthetic Lease Closing Checklist recognized that the filing number 6416808 4 listed therein was related to the Term Loan. (Duker Aff. at ¶ 29.) Throughout the closing of the Synthetic Lease Transaction, there were also no discussions among JPMCB, Simpson, GM, Mayer Brown or any party to the transaction regarding any of the three Delaware UCC-1 financing statements listed under section 5 of the

Synthetic Lease Closing Checklist, including the UCC-1 financing statement numbered 6416808

4. (Callagy Decl. Ex. 5 (Merjian Tr.) at 18 and 22; Duker Aff. ¶ 16.) JPMCB refers the Court to the Synthetic Lease Closing Checklist for the complete and accurate terms contained therein.

(Callagy Decl. Ex. 15.)

Statement No. 30: On October 15, 2008, Green sent Arun Sundaram (“**Sundaram**”), one of his client contacts at Old GM, a draft of the checklist, which listed the Term Loan Financing Statement as a UCC for which a termination statement would be prepared, to “keep them in the loop.” (Green 31:4-14).

Response No. 30: Disputed. On October 15, 2008, Mr. Green sent an e-mail to Arun Sundaram, as well as Timothy Conder of GM, attaching a draft of the Synthetic Lease Closing Checklist. Neither the e-mail nor the draft closing checklist forwarded by Mr. Green to Mr. Sundaram and Mr. Conder on October 15, 2008 refer to the Term Loan. (Fisher Decl. Ex. N.)⁴ The subject of Mr. Green’s e-mail is “GM/JPMorgan Chase Synthetic Lease Releases (Auto Facilities Real Estate Trust 2001-1)” and the title of the attachment was “GM Checklist – Release of Properties from JPM Chase Synthetic Lease.XLS.” (*Id.*) JPMCB refers the Court to Mr. Green’s October 15, 2008 e-mail and attachment thereto for the complete and accurate terms contained therein. (*Id.*) JPMCB also refers to and incorporates its response contained in Paragraph 29.

Statement No. 31: On October 15, 2008, Duker received the draft checklist from Sundaram, which listed the Term Loan Financing Statement as a UCC for which a termination statement would be prepared.

Response No. 31: Disputed. On October 15, 2008, Mr. Sundaram sent an e-mail to Mr. Duker attaching a draft of the Synthetic Lease Closing Checklist. Neither the e-mail nor the draft checklist forwarded by Mr. Sundaram to Mr. Duker on October 15, 2008 refer to the Term

⁴ “**Fisher Decl.**” refers to the Eric. B. Fisher declaration dated and filed with the Court on July 1, 2010. (Docket Entry 27.)

Loan. (Fisher Decl. Ex. O.) The subject of Mr. Sundaram's e-mail is "RE: Auto Facilities Real Estate Trust" and the title of the attachment was "GM Checklist – Release of Properties from JPM Chase Synthetic Lease.XLS." (*Id.*) JPMCB refers the Court to Mr. Sundaram's October 15, 2008 e-mail and attachment thereto for the complete and accurate terms contained therein. (*Id.*) JPMCB also refers to and incorporates its response contained in Paragraph 29.

Statement No. 32: On October 15, 2008, Merjian received a draft of the checklist from Green, which listed the Term Loan Financing Statement as a UCC for which a termination statement would be prepared, so Green could be sure they "were on the same page about what needed to be done for closing" the Lease Payoff. (Green 23:17-21).

Response No. 32: Disputed. On October 15, 2008, Mr. Green sent an e-mail to Mr. Merjian attaching a draft of the Synthetic Lease Closing Checklist. Neither the e-mail nor the draft checklist forwarded by Mr. Green to Mr. Merjian on October 15, 2008 refer to the Term Loan. (Fisher Decl. Ex. P.) The subject of Mr. Green's e-mail was "GM/JPMorgan Chase Synthetic Lease Property Releases (Auto Facilities Real Estate Trust 2001-1)" and the title of the attachment was "GM Checklist – Release of Properties from JPM Chase Synthetic Lease.XLS." (*Id.*) JPMCB refers the Court to Mr. Green's October 15, 2008 e-mail and attachment thereto for the complete and accurate terms contained therein. (*Id.*) JPMCB also refers to and incorporates its response contained in Paragraph 29.

Statement No. 33: On October 15, 2008, Duker again received a draft of the checklist, this time from Merjian, which listed the Term Loan Financing Statement as a UCC for which a termination statement would be prepared.

Response No. 33: Disputed. On October 15, 2008, Mr. Merjian forwarded an e-mail to Mr. Duker that he received earlier on October 15, 2008 from Mr. Green attaching a draft of the Synthetic Lease Closing Checklist. Neither the e-mail nor the draft closing checklist forwarded by Mr. Merjian to Mr. Duker on October 15, 2008 refer to the Term Loan. (Fisher Decl. Ex. Q.) The subject of Mr. Merjian's e-mail was "FW: GM/JPMorgan Chase Synthetic

Lease Property Releases (Auto Facilities Real Estate Trust 2001-1)” and the title of the attachment was “GM Checklist – Release of Properties from JPM Chase Synthetic Lease.XLS.” (*Id.*) JPMCB refers the Court to Mr. Merjian’s October 15, 2008 e-mail and attachment thereto for the complete and accurate terms contained therein. (*Id.*) JPMCB also refers to and incorporates its response contained in Paragraph 29.

Statement No. 34: On October 15, 2008, Merjian and Gordon received “drafts of the closing documents” from Green, which included a draft termination statement relating to the Term Loan Financing Statement (the “**Term Loan Termination Statement**”).

Response No. 34: Disputed. On October 15, 2008, Mr. Green sent Mr. Merjian an e-mail, with a copy to Mr. Gordon, which attached nearly one hundred pages of draft documents that were referenced on the Synthetic Lease Closing Checklist. (Callagy Decl. Ex. 16.) These documents included ten different draft UCC-3 termination statements: seven county filings, and three Delaware UCC-3 termination statements relating to financing statements referenced in the Synthetic Lease Closing Checklist. (*Id.* at JPMCB-STB-00000204-206, 221-222, 226-227 and 242-244.) Mr. Green did not attach copies of any of the UCC-1 financing statements that corresponded to the filing numbers referenced on the ten draft UCC-3 termination statements that were circulated. (Callagy Decl. Ex. 16.) Neither the e-mail or the attachments forwarded by Mr. Green on October 15, 2008 refer to the Term Loan. (*Id.*) The subject line of Mr. Green’s e-mail enclosing the draft documents was “GM/JPMorgan Chase – Synthetic Lease (Auto Facilities Real Estate Trust 2001-1).” (*Id.*) One of the ten draft UCC-3 termination statements circulated among the nearly one hundred pages of draft documents by Mr. Green corresponded to the UCC-1 financing statement numbered 6416808 4 (the “**Unrelated Termination Statement**”). (*Id.* at JPMCB-STB-00000206.) The draft Unrelated Termination Statement referenced GM as the debtor, JPMCB, as Administrative Agent, as the secured party and the filing number 646808 4. (*Id.*) The draft Unrelated Termination Statement did not refer to the

Term Loan. (*Id.*) JPMCB refers the Court to Mr. Green's October 15, 2008 e-mail to Mr. Merjian and attachments thereto for the complete and accurate terms contained therein. (Callagy Decl. Ex. 16.)

Statement No. 35: The first line of the draft Term Loan Termination Statement reads "INITIAL FINANCING STATEMENT FILE # 64168084 on 11.30.06." The second line has a box checked next to "TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement." The sixth line requests "CURRENT RECORD INFORMATION" and lists "GENERAL MOTORS CORPORATION." The ninth line requests the "NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT" and lists "JPMORGAN CHASE BANK, AS ADMINISTRATIVE AGENT." (*Id.* at 206).

Response No. 35: Disputed in part. Line 1a of the draft Unrelated Termination Statement states "INITIAL FINANCING STATEMENT FILE # 6416808 4 on 11.30.06." Line 2 has a box checked next to "TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement." (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.) Line 6 states "CURRENT RECORD INFORMATION:" and line 6a states "ORGANIZATION'S NAME GENERAL MOTORS CORPORATION." (*Id.*) Line 9 states "NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT . . ." and line 9a states "ORGANIZATION'S NAME JPMORGAN CHASE BANK, AS ADMINISTRATIVE AGENT." (*Id.*) The draft of the Unrelated Termination Statement was prepared by Mayer Brown, not JPMCB, and does not refer to the Term Loan. (*Id.*) Mr. Green did not attach copies of any of the UCC-1 financing statements that corresponded to the filing numbers referenced on the ten draft UCC-3 termination statements that were circulated. (Callagy Decl. Ex. 16.) In addition, Mr. Gonshorek, the paralegal at Mayer Brown tasked with drafting the UCC-3 termination statements, prepared the Unrelated Termination Statement with the belief that it pertained to the release of security relating to the Synthetic Lease Transaction. (Callagy Decl.

Ex. 3 (Gonshorek Tr.) at 20.) Under section 10 of the draft Unrelated Termination Statement, Mr. Gonshorek typed in “Matter No. 00652500.” (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.) “Matter No. 00652500” is an internal Mayer Brown client-matter number and relates exclusively to Mayer Brown’s representation of GM in connection with the Synthetic Lease Transaction and its repayment. (Callagy Decl. Ex. 2 (Green Tr.) at 81-82.) JPMCB refers the Court to the draft Unrelated Termination Statement for the complete and accurate term contained therein. (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.)

Statement No. 36: On October 15, 2008, Duker received “drafts of the closing documents” from Merjian, identical to those received by Merjian from Green, which included a draft of the Term Loan Termination Statement.

Response No. 36: Disputed. On October 15, 2008, Mr. Merjian forwarded Mr. Green’s October 15, 2008 email that attached nearly one hundreds pages of draft documents related to the repayment of the Synthetic Lease Transaction to Mr. Duker. (Supp. Duker Aff. Ex. A.)⁵ However, the e-mail that Mr. Duker received was corrupted and the draft Unrelated Termination Statement along with all but one of the attachments were unreadable and not identical to what Mr. Green had forwarded to Mr. Merjian. (*Id.*)

Statement No. 37: On October 17, 2008, Merjian replied to Green’s email (noted in paragraph 34 above), copying Gordon, stating, “Ryan Nice job on the documents.”

Response No. 37: Undisputed in part. Mr. Green “understood [Mr. Merjian’s comment] to mean that Mardi didn’t have additional comments to the documents. I didn’t understand it to mean anything about filing documents because we weren’t at closing.” (Callagy Decl. Ex. 2 (Green Tr.) at pp. 91-92.) The Synthetic Lease Termination Agreement was the only source of GM’s and Mayer Brown’s authority to file UCC-3 termination statements. (Callagy

⁵ “**Supp. Duker Aff.**” refers to the Richard W. Duker supplemental affidavit dated August 5, 2010 and filed with the Court herewith in further support of JPMCB’s motion for summary judgment and in opposition to the Committee’s motion for partial summary judgment.

Decl. Ex. 4 (Gordon Tr.) at 53-54; Ex. 11 at JPMCB-00000078-79; Duker Aff. at ¶ 18; Hoge Aff. at ¶¶ 8-9, and 11.)

Statement No. 38: On October 24, 2008, Merjian received draft escrow instructions from Green that were drafted for signature by counsel for Old GM, counsel for the trustee, counsel for the Administrative Agent and the title company.

Response No. 38: Undisputed.

Statement No. 39: The first page of the draft escrow instructions shows “Termination of UCC Financing Statements (File Numbers . . . and 64168084).” (*Id.* at 430).

Response No. 39: Undisputed in part. The first page of the Synthetic Lease Escrow Letter (as defined in the JPMCB Rule 7056-1 Statement at ¶ 66) (the “**Synthetic Lease Escrow Letter**”) from Mr. Green listed, by filing number, financing statements to be terminated:

2. Termination of UCC Financing Statements (File Numbers 2092532 5, 2092526 7, and 6416808 4) (the “**General UCC Terminations**”)

(Callagy Decl. Ex. 19 at MB000024.)

The subject line of the Synthetic Lease Escrow Letter indicated that all documents listed therein related only to the repayment of the Synthetic Lease Transaction:

Termination of that certain Participation Agreement dated as of October 31, 2001, among General Motors Corporation (“**GM**”), as Lessee and Construction Agent, Auto Facilities Real Estate Trust 2001-1 (“**Trust**”), as Lessor, Wilmington Trust Company (“**Trustee**”), as Trustee, the Persons named therein as Investors, the Persons named therein as Backup Facility Banks, Relationship Funding Company, LLC, and JPMorgan Chase Bank (“**Agent**”), as Administrative Agent, as amended (the “**Participation Agreement**”) and release of all liens related thereto including liens relating to the following properties: (i) the SPO Headquarters Building located in Grand Blanc, Michigan (the “**Grand Blanc Property**”); (ii) the GM Powertrain L6 Engine Plant in Flint, Michigan (the “**Flint Property**”); (iii) the Franklin Deck in Detroit, Michigan (the “**Franklin Deck**”); (iv) the River East Parking Deck in Detroit, Michigan (the “**River East Deck**”); and (v) Parcel 6/C in Detroit, Michigan (“**Parcel 6/C**”) (the Grand Blanc Property, the Flint Property, the Franklin Deck, the River East Deck and Parcel 6/C herein are each a “**Property**” and,

collectively, the “**Properties**”). Capitalized terms used but not defined herein have the respective meanings specified in Annex A to the Participation Agreement.

(*Id.*) The Synthetic Lease Escrow Letter does not refer to the Term Loan. (*Id.*) JPMCB refers the Court to the Synthetic Lease Escrow Letter for the complete and accurate terms contained therein. (Callagy Decl. Ex. 19.)

Statement No. 40: Green asked Merjian if he had any comments to the draft escrow letter. Merjian replied that “it was fine.”

Response No. 40: Undisputed in part. Mr. Green understood Mr. Merjian’s e-mail to mean that he did not have any additional comments to the draft of the Synthetic Lease Escrow Letter. (Callagy Decl. Ex. 2 (Green Tr.) at pp. 93-94.) The Synthetic Lease Termination Agreement was the only source of GM’s and Mayer Brown’s authority to file UCC-3 termination statements. (Callagy Decl. Ex. 4 (Gordon Tr.) at 53-54; Ex. 11 at JPMCB-00000078-79; Duker Aff. at ¶ 18; Hoge Aff. at ¶¶ 8-9, and 11.)

Statement No. 41: The escrow instructions were in fact signed by Green, as attorney for Old GM; Merjian, as attorney for JPMorgan; counsel for the trustee; and the title company.

Response No. 41: Undisputed.

Statement No. 42: Merjian understood that the purpose of escrow instructions was to have the documents “placed with one party so that they could be released at the appropriate time to the appropriate parties.” (Merjian 33:19-34:4).

Response No. 42: Undisputed in part. The Synthetic Lease Escrow Letter stated that upon the closing the parties would each receive sets of the documents listed therein, defined “collectively, [as] the ‘Escrow Documents.’” (Callagy Decl. Ex.19 at MB000024.) One of the dozens of Escrow Documents listed in the Synthetic Lease Escrow Letter was “Termination of UCC Financing Statements (File Numbers 2092532 5, 2092526 7, and 6416808 4) (the “**General UCC Terminations**”).” (*Id.*) The Synthetic Lease Escrow Letter does not refer to the Term Loan. (*Id.*) The Synthetic Lease Escrow Letter instructed LandAmerica to record a subset of

certain of the Escrow Documents (defined therein as “**Recording Documents**”) with the appropriate recording offices in the applicable states following the repayment. (*Id.* at MB000028-29.) The Recording Documents set forth in the Synthetic Lease Escrow Letter consisted of documents such as releases of Mortgages, releases of Assignments of Leases and Rents, terminations of Short Form Memorandum of Leases and quitclaim Deeds. (*Id.*) The Recording Documents did not include any of the General UCC Terminations. (*Id.*) The Synthetic Lease Escrow Letter instructed the escrow agent to forward the remaining Escrow Documents, including the General UCC Terminations, along with certified copies of the Recording Documents, to GM’s counsel:

Immediately following closing, any extra original documents and copies of all Escrow Documents shall be forwarded to the counsel for GM, except for those documents which have been forwarded to the recorder’s office (in which case certified copies of the foregoing shall be found to the counsel for GM).

(*Id.* at MB000029.) The Synthetic Lease Escrow Letter did not provide any instructions or authority to GM’s counsel as to what to do with those documents upon their delivery. (*Id.*) JPMCB refers the Court to the Synthetic Lease Escrow Letter for the complete and accurate terms contained therein. (*Id.*) The Synthetic Lease Termination Agreement was the only source of GM’s and Mayer Brown’s authority to file UCC-3 termination statements. (Callagy Decl. Ex. 4 (Gordon Tr.) at 53-54; Ex. 11 at JPMCB-00000078-79; Duker Aff. at ¶ 18; Hoge Aff. at ¶¶ 8-9, and 11.)

Statement No. 43: Merjian reviewed the escrow instructions and understood that the termination statements listed were documents that would be released to Mayer Brown upon the closing of the Lease Payoff. (Merjian 34:19-35:5).

Response No. 43: Undisputed in part. JPMCB also refers to and incorporates its response contained in Paragraph 42.

Statement No. 44: Mayer Brown has a UCC compliance team that reviews draft UCC statements before they are filed to detect any issues. (Green 73:18-74:1). The UCC compliance team reviewed the draft Term Loan Termination Statement before it was filed. (Gordon 52:3-6).

Response No. 44: Undisputed that, according to Mr. Green, Mayer Brown has a UCC compliance team that reviews UCC statements, and allegedly reviewed the Unrelated Termination Statement before it was filed. There is no evidence in the record that the Mayer Brown UCC compliance team was aware that the Unrelated Termination Statement was related to the Term Loan. All of the deponents in this adversary proceeding first learned after June 1, 2009, after GM had filed for bankruptcy protection, that the Unrelated Termination Statement that was filed in October 2008 was related to the Term Loan. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 32; Ex. 2 (Green Tr.) at 64; Ex. 3 (Gonshorek Tr.) at 35; Ex. 4 (Gordon Tr.) at 25; Ex. 6 (Duker Tr.) at 22; Duker Aff. at ¶ 29; Hoge Aff.⁶ at ¶ 12.)

Statement No. 45: On October 30, 2008, the Lease Payoff closed and Green told Gonshorek to file the Term Loan Termination Statement. (Gonshorek 32:6-12).

Response No. 45: Undisputed that on October 30, 2008 the Synthetic Lease Transaction was repaid and Mayer Brown caused the filing of UCC-3 termination statements with the Delaware Secretary of State, including the Unrelated Termination Statement. The Unrelated Termination Statement referenced GM as the debtor, JPMCB, as Administrative Agent, as the secured party and the filing number 646808 4. (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.) The Unrelated Termination Statement does not refer to the Term Loan. (*Id.*) In addition, the agreement governing the repayment of the Synthetic Lease Transaction was entitled “Termination Agreement and Release of Operative Agreements” (the “**Synthetic Lease Termination Agreement**”) and was drafted by Mayer Brown. (Duker Aff. Ex. L.) The

⁶ “**Hoge Aff.**” refers to the Debra Homic Hoge affidavit dated March 18, 2010 and filed with the Court on July 1, 2010 in support of JPMCB’s summary judgment motion. (Docket Entry 42.)

Synthetic Lease Termination Agreement was executed by GM, JPMCB and the other parties to the transaction on or about October 30, 2008. (Duker Aff. at ¶ 17; Ex. L; Hoge Aff. at ¶ 7.) The Synthetic Lease Termination Agreement specifically limited GM's authority to file UCC-3 termination statements as to existing UCC-1 financing statements *filed in connection with the Properties* that were the subject of the Synthetic Lease Transaction. (Callagy Decl. Ex. 4 (Gordon Tr.) at 22-23; Ex. 16.) Thus, the Synthetic Lease Termination Agreement stated that:

In consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby confessed and acknowledged, the undersigned, each of which is a party to one or more of the agreements identified as the Operative Agreements, hereby agree that (i) each of such Operative Agreements and any Commitment thereunder is hereby terminated and is discharged and of no further force or effect as of the date hereof, and (ii) the Administrative Agent and Lessor do hereby (x) release all of their Liens and Lessor Liens against the Properties created by the Operative Agreements, (y) acknowledge that such Liens and Lessor Liens are forever released, satisfied and discharged and (x) authorize Lessee [i.e., GM] to file a termination of any existing Financing Statement relating to the Properties.

(Duker Aff. Ex. L at JPMCB-0002801.) The Synthetic Lease Termination Agreement further stated that “[a]ll capitalized terms not otherwise defined herein shall have the meanings set forth in Annex A to that certain Participation Agreement dated as of October 31, 2001 . . .” (*Id.*) The relevant Synthetic Lease Transaction Documents defined “Properties” to be twelve specified parcels of real estate. (JPMCB Rule 7056-1 Statement at ¶¶ 6 and 7; Duker Aff. Exs. B, C and D.) The Synthetic Lease Termination Agreement, therefore, as it related to the filing of UCC statements, only authorized the filing of UCC-3 termination statements relating to the Properties that served as collateral for the Synthetic Lease Transaction – nothing more. (Duker Aff. at ¶ 18; Hoge Aff. at ¶¶ 8-9 and 11; Callagy Decl. Ex. 2 (Green Tr.) at 95-96; Ex 5 (Merjian Tr.) at 56.) The Synthetic Lease Termination Agreement was the only source of GM's and Mayer Brown's authority to file UCC-3 termination statements. (Callagy Decl. Ex. 4 (Gordon

Tr.) at 53-54; Ex. 11 at JPMCB-00000078-79; Duker Aff. at ¶ 18; Hoge Aff. at ¶¶ 8-9, and 11.) JPMCB refers the Court to the Synthetic Lease Termination Agreement for the complete and accurate terms contained therein. (Callagy Decl. Ex. 16.)

Statement No. 46: On October 30, 2008, the Term Loan Termination Statement was filed without any changes to the draft received by Duker, Merjian and Gordon.

Response No. 46: Disputed. Mr. Duker did not receive a copy of the Unrelated Termination Statement. (Supp. Duker Aff. Ex. A.) The Unrelated Termination Statement filed October 30, 2008 differed on its face from the draft circulated on October 15, 2008. (*Compare* Callagy Ex. 16 at JPMCB-STB-00000206 and Fisher Decl. Ex. X.) Neither the draft of or the filed copy of the Unrelated Termination Statement refer to the Term Loan. (*Id.*) All of the deponents in this adversary proceeding first learned after June 1, 2009, after GM had filed for bankruptcy protection, that the Unrelated Termination Statement that was filed in October 2008 was related to the Term Loan. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 32; Ex. 2 (Green Tr.) at 64; Ex. 3 (Gonshorek Tr.) at 35; Ex. 4 (Gordon Tr.) at 25; Ex. 6 (Duker Tr.) at 22; Duker Aff. at ¶ 29; Hoge Aff. at ¶ 12.) JPMCB refers the Court to the draft and filed copy of the Unrelated Termination Statement for the complete and accurate terms contained therein. (Callagy Ex. 16 at JPMCB-STB-00000206; Fisher Decl. Ex. X.)

Statement No. 47: Neither Merjian nor Duker ever told Mayer Brown not to file the Term Loan Termination Statement. (Green 49:11-15).

Response No. 47: Disputed. The Synthetic Lease Termination Agreement, signed by Mr. Duker, only gives GM and Mayer Brown authority to file termination statements relating to the Synthetic Lease Transaction, not the Term Loan. (Duker Aff. Ex. L) The Unrelated Termination Statement does not refer to the Term Loan. (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.) Mr. Merjian and Simpson did not represent JPMCB in connection with the Term Loan and could not have given authority on behalf of JPMCB to file a termination statement

relating to the Term Loan. (Duker Aff. at ¶¶ 14 and 21; Callagy Decl. Ex. 5 (Merjian Tr.) at 54-55.) All of the deponents in this adversary proceeding first learned after June 1, 2009, after GM had filed for bankruptcy protection, that the Unrelated Termination Statement that was filed in October 2008 was related to the Term Loan. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 32; Ex. 2 (Green Tr.) at 64; Ex. 3 (Gonshorek Tr.) at 35; Ex. 4 (Gordon Tr.) at 25; Ex. 6 (Duker Tr.) at 22; Duker Aff. at ¶ 29; Hoge Aff. at ¶ 12.)

Statement No. 48: Neither Merjian nor Duker ever communicated changes to the closing checklist or asked questions about the list of financing statements it contained under “Termination of UCCs.” (Merjian 18:7-11; Duker41:2-8).

Response No. 48: Undisputed that Mr. Merjian and Mr. Duker did not have discussions regarding the financing statement filing numbers listed on the Synthetic Lease Closing Checklist drafts. No one knew that any of the documents listed on the Synthetic Lease Closing Checklist drafts related to the Term Loan. (Duker Aff. at ¶¶ 16 and 29.) JPMCB refers to and incorporates its responses to paragraphs 29 and 47.

Statement No. 49: Neither Merjian nor Duker ever communicated changes to the draft Term Loan Termination Statement. (Merjian 24:8-12; Duker 45:15-22).

Response No. 49: Undisputed that Mr. Duker and Mr. Merjian did not have discussions regarding the Unrelated Termination Statement prior to June 1, 2009. No one knew prior to June 1, 2009 that a termination statement relating to the Term Loan was filed. (Duker Aff. at ¶¶ 16 and 29.) JPMCB refers to and incorporates its responses to paragraphs 29 and 47.

Statement No. 50: In March 2009, the Term Loan Agreement was amended (the “Amendment”). (Duker 26:18-27:1).

Response No. 50: Undisputed that the First Amendment (as defined in the JPMCB Rule 7056-1 Statement at ¶ 84) was executed on March 4, 2009. As part of the First Amendment, the parties agreed to, among other things, an increase in fees to be paid to the Term Loan lenders, an increase in the Term Loan Collateral ratio and a requirement that GM provide

reports to the Term Loan lenders detailing the value of the Term Loan Collateral on a quarterly basis. (JPMCB Rule 7056-1 Statement at ¶ 83; Duker Aff. at ¶ 24; Ex. N.) JPMCB refers the Court to the First Amendment for the complete and accurate terms contained therein. (Duker Aff. Ex. N.)

Statement No. 51: Duker was involved in the Amendment and signed a fee letter pursuant to which JPMorgan received \$6 million as consideration for its agreement to arrange the then-proposed Amendment.

Response No. 51: Undisputed.

Statement No. 52: Morgan, Lewis & Bockius LLP (“**Morgan Lewis**”) represented JPMorgan in connection with the Amendment and would know if any UCC searches had been performed in connection with the Amendment. (Duker 28:2-24).

Response No. 52: Undisputed that Morgan Lewis (as defined in the JPMCB Rule 7056-1 Statement at ¶ 18) represented JPMCB in connection with the First Amendment. Disputes that Morgan Lewis performed any UCC searches in connection with the First Amendment or that Morgan Lewis learned prior to the GM bankruptcy of the filing of a termination statement relating to the Term Loan. On or about June 15, 2009, JPMCB’s counsel, Morgan Lewis, in connection with Term Loan and the GM bankruptcy, discovered that Mayer Brown had caused a UCC-3 termination statement to be filed in October 2008 related to the Term Loan. (Callagy Decl. Ex. 20.) Moreover, all of the deponents in this adversary proceeding first learned after June 1, 2009, after GM had filed for bankruptcy protection, that the Unrelated Termination Statement that was filed in October 2008 was related to the Term Loan. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 32; Ex. 2 (Green Tr.) at 64; Ex. 3 (Gonshorek Tr.) at 35; Ex. 4 (Gordon Tr.) at 25; Ex. 6 (Duker Tr.) at 22; Duker Aff. at ¶ 29; Hoge Aff. at ¶ 12.)

Statement No. 53: On May 6, 2009, Duker asked JPMorgan’s traditional credit products group (“**TCP**”) for a “summary of legal/collateral documentation including details on all UCC filings” regarding the Term Loan because he was concerned about the potential bankruptcy of Old GM. (Duker 54:20-23).

Response No. 53: Undisputed.

Statement No. 54: TCP told Duker to email “TB Collateral Services” to inquire about collateral, and “LienPerfection Bangalore” to inquire about UCCs.

Response No. 54: Undisputed.

Statement No. 55: Lien Perfection, Bangalore (“**Bangalore**”) is a group within JPMorgan that “tracks UCC filings” (Duker 56:1-5), and it is Bangalore’s responsibility to register UCC filings that relate to JPMorgan collateral in JPMorgan’s books and records. (Duker 72:7-17).

Response No. 55: Disputed. Lien Perfection, Bangalore is a group within JPMCB that inputs UCCs in its system when they are filed and sent to them by JPMCB’s counsel. (Callagy Decl. Ex. 6 (Duker Tr.) at 57-58.) Lien Perfection, Bangalore is responsible for notifying JPMCB if continuations are required on such UCCs. (*Id.*) There is no evidence in the record that Lien Perfection, Bangalore or anyone else at JPMCB received a copy of the Unrelated Termination Statement or was aware of its filing prior to the GM bankruptcy. Mr. Duker is not aware of anyone at JPMCB who learned that the Unrelated Termination Statement had been filed prior to the GM bankruptcy. (*Id.* at 70.)

Statement No. 56: Bangalore responded to Duker’s inquiry by providing documentation about the wrong facility. (Duker 60:9-14). Duker never received the information he requested from Bangalore on May 6, 2009 regarding the Term Loan. (Duker 62:14-17).

Response No. 56: Undisputed.

Statement No. 57: In June 2009, Morgan Lewis, counsel to JPMorgan, called Gordon to ask why Mayer Brown had filed the Term Loan Termination Statement. (Gordon 25:7-26:2).

Response No. 57: Undisputed that in June 2009, after the GM filed for bankruptcy protection on June 1, 2009, Morgan Lewis telephoned Mr. Gordon to ask why a termination statement relating to the Term Loan had been filed. (Callagy Decl. Ex. 4 (Gordon Tr.) at 25.)

Statement No. 58: In response to this query, Gordon called Green, indicating that there was concern about the Term Loan Termination Statement and asking Green to look into the matter further. (Green 64:14-66:9).

Response No. 58: Undisputed that after Mr. Gordon received the telephone call from Morgan Lewis he spoke with Mr. Green on the telephone, and asked him to look into what Morgan Lewis was referring to and to provide Mr. Gordon with the results of his search. (Callagy Decl. Ex. 4 (Gordon Tr.) at 26.)

Statement No. 59: Green then met with Gordon to “let him know that the UCC causing the concern was referenced on the checklist and in the escrow instructions.” (Green 68:9-14).

Response No. 59: Undisputed.

Statement No. 60: Green showed Gordon the escrow instructions and the checklist so that Gordon could see that the Term Loan Termination Statement “was within the universe of documents involved in the” Lease Payoff. (Green 71:3-6).

Response No. 60: Undisputed that in response to Mr. Gordon’s inquiry, Mr. Green referenced the Synthetic Lease Closing Checklist and the Synthetic Lease Escrow Letter in order to show Mr. Gordon that the Unrelated Termination Statement was listed in these documents by filing number. (Callagy Decl. Ex. 2 (Green Tr.) at 68, 70-71.) JPMCB refers the Court to the Synthetic Lease Closing Checklist and the Synthetic Lease Escrow Letter for the complete and accurate terms contained therein. (Callagy Decl. Exs. 15 and 19.)

Statement No. 61: Mayer Brown, as counsel to Old GM, proposed to have Gordon execute an affidavit “in order to assist JPMorgan Chase in establishing that” the Term Loan Termination Statement “was erroneously filed.” (Gordon 36:6-17).

Response No. 61: Undisputed that Mayer Brown proposed that Mr. Gordon provide an affidavit “[i]n order to assist JPMorgan Chase in establishing that . . . the termination statement that was filed that related to the financing statement [] wasn’t related to the GM/Chase synthetic lease properties [and] was erroneously filed.” (Callagy Decl. Ex. 4 (Gordon Tr.) at 36.)

Statement No. 62: Morgan Lewis, as counsel to JPMorgan, prepared the initial draft of the affidavit (Gordon 32:25-33:2), which it then sent to Mayer Brown for review, explaining that JPMorgan was “very eager to be in a position for [the affidavit] to be executed . . .”

Response No. 62: Undisputed in part. JPMCB also refers the Court to the June 17, 2009 e-mail from Morgan Lewis to Mayer Brown that attached a draft of Mr. Gordon's proposed affidavit for the complete and accurate contents contained therein. (Fisher Decl. Ex. AA.)

Statement No. 63: Gordon revised the initial draft of the affidavit (Gordon 32:24), but claims that he did not include background about how the Term Loan Termination Statement came to be filed because Morgan Lewis did not consider those details to be relevant:

Response No. 63: Undisputed that Mr. Gordon reviewed the initial draft of his affidavit. Fern Bomchill, Mayer Brown's counsel, in an e-mail dated June 18, 2009, claimed that Morgan Lewis had indicated the day before that it did not believe that the background of how the Unrelated Termination Statement came to be filed was relevant at that time. (Fisher Decl. Ex. BB.) JPMCB refers the Court to the June 18, 2009 e-mail from Ms. Bomchill to Richard Toder of Morgan Lewis for the complete and accurate contents contained therein. (*Id.*)

Statement No. 64: Although the initial draft of the affidavit prepared by Morgan Lewis stated that Gonshorek "unfortunately terminated [the Term Loan Financing Statement] without [Gordon's] direction and without authority" (Proposed Affidavit ¶ 9), Gordon deleted such statement from the final affidavit. (Gordon 42:18-43:1).

Response No. 64: Undisputed that Mr. Gordon deleted the statement "The paralegal unfortunately terminated this financing statement without my direction and without authority" from the initial draft of his affidavit. Mr. Gordon deleted this phrase from the first draft of his affidavit because Mr. Gonshorek's filing of a termination statement was not the same as terminating the financing statement relating to the Term Loan. (Callagy Decl. Ex. 4 (Gordon Tr.) at 43.)

Statement No. 65: Although the initial draft of the affidavit prepared by Morgan Lewis stated that "Mayer Brown was not authorized to terminate any financing statement related to the Term Loan Agreement" (Proposed Affidavit ¶ 10), the final affidavit instead states that Old "GM was not authorized **by the Termination Agreement** to terminate any financing statement related to the Term Loan Agreement." (emphasis added, Gordon Affidavit ¶ 10).

Response No. 65: Undisputed that paragraph 10 of Mr. Gordon's affidavit states "GM was not authorized by the Termination Agreement to terminate any financing statement related to the Term Loan Agreement." JPMCB refers the Court to Mr. Gordon's affidavit for the complete and accurate terms contained therein. (Callagy Decl. Ex. 11.) Mayer Brown believed that all the UCC-3 termination statements that it had caused to be filed in October 2008 related to the Synthetic Lease Transaction, and at no point did Mayer Brown believe it had any authority to file a UCC-3 termination statement related to the Term Loan. (*Id.*) According to Mr. Gordon:

The [termination] statements that related to the GM/Chase synthetic lease were permitted to be filed by [virtue of] the [Synthetic Lease Termination Agreement], not [the Synthetic Lease Escrow Letter].

(Callagy Decl. Ex. 4 (Gordon Tr.) at 21.) Mr. Gordon also did not believe Mayer Brown had any authority to file the Unrelated Termination Statement:

Q. During the period of time that you were working on this transaction -- this synthetic lease transaction up to the present, has anybody ever told you that JPMorgan authorized the filing of the unrelated termination statement?

A. No.

Q. During the period of time you worked on this matter up to today, did you ever form the belief that Mayer Brown was authorized in filing the unrelated termination statement?

A. No.

(*Id.* at pg. 66.)

Statement No. 66: On June 18, 2009, Gordon signed the final affidavit swearing that the filing of the Term Loan Termination Statement was "[u]nbeknownst" to him (Gordon Affidavit ¶ 8), although Gordon now acknowledges having received, in October 2008, a draft of the Term Loan Termination Statement and the checklist listing the Term Loan Financing Statement as a UCC for which a termination statement would be prepared. (Gordon 45:16-46:3).

Response No. 66: Disputed. Mr. Gordon was copied on e-mails which attached the draft Unrelated Termination Statement and Synthetic Lease Closing Checklist that listed the Unrelated Termination Statement by filing number. (Callagy Decl. Ex. 4 (Gordon Tr.) at 11-12.) Mr. Gordon did not recall reviewing the draft Synthetic Lease Closing Checklist or receiving the e-mail that attached a draft of the Unrelated Termination Statement. (*Id.*) The Synthetic Lease Closing Checklist and Unrelated Termination Statement do not refer to the Term Loan. JPMCB refers to and incorporates its responses to paragraphs 29 and 47 above. Mr. Gordon's affidavit stating that the filing of the termination statement relating to the Term Loan was "unbeknownst" to him, therefore, is accurate. (Callagy Decl. Ex. 11.)

Statement No. 67: On June 19, 2009, Morgan Lewis transmitted the final affidavit to counsel for the Committee, Debtors and United States Treasury, and asserted that the affidavit "makes clear" that the filing of the Term Loan Termination Statement was unauthorized. (Fisher Declaration Exhibit G).

Response No. 67: Undisputed that Morgan Lewis sent Mr. Gordon's executed affidavit to counsel for the Committee, Debtors and United States Department of the Treasury on June 19, 2009. (Callagy Decl. Ex. 11.) JPMCB refers the Court to Morgan Lewis' June 19, 2009 e-mail and attachment thereto for the complete and accurate terms contained therein. (*Id.*)

Statement No. 68: On June 25, 2009, the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties* (the "**DIP Order**") was entered by this Court, approving repayment of the Term Loan Lenders subject to the Committee's right to investigate and challenge perfection of the Lien.

Response No. 68: Undisputed that on June 25, 2009, this Court entered the DIP Order (as defined in the JPMCB Rule 7056-1 Statement at ¶ 96), which authorized the repayment of the Term Loan. The DIP Order provided:

- (d) Effective upon entry of this Final Order, the Debtors (on behalf of their estates) and any successor thereto release the

Prepetition Senior Facilities Secured Parties . . . with respect to any and all actual or potential demands, claims, actions, causes of action (including derivative causes of action), suits, assessments, liabilities, losses, costs, damages, penalties, fees, charges, expenses and all other forms of liability whatsoever, in law or equity, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising under the Bankruptcy Code, state law or otherwise now existing or hereafter arising, directly or indirectly related to the Prepetition Senior Facilities and any and all dealings between the Prepetition Senior Facilities Secured Parties in connection with the Prepetition Senior Facilities, provided, however, that such release shall not apply to the Committee with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties . . . The Committee shall have automatic standing and authority to both investigate the Reserved Claims and bring actions based upon the Reserved Claims against the Prepetition Senior Facilities Secured Parties not later than July 31, 2009 . . . provided, that upon the filing of any adversary proceeding prosecuting any reserved Claim, the Challenge Period shall be extended with respect to such adversary proceeding through and until a court of competent jurisdiction dismisses such adversary proceeding. The grant of automatic standing shall be without any further order of this Court or any requirement that the Committee file a motion seeking standing or authority to file a motion seeking standing or authority before prosecuting any such challenge. Any Prepetition Senior Facilities Secured Party accepting Payment shall submit to the jurisdiction of the Bankruptcy Court, it being 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 lender.

(DIP Order at Chapter 11 Case Docket Entry 2529 at 25.) JPMCB refers the Court to the DIP

Order for the complete and accurate terms contained therein. (*Id.*)

Statement No. 69: Paragraph 19(d) of the DIP Order authorized the Committee to bring actions based upon the perfection of the Lien by July 31, 2009.

Response No. 69: JPMCB refers to and incorporates its response to paragraph 68.

Statement No. 70: On June 30, 2009, Duker, as managing director of JPMorgan, signed and sent a letter to Old GM, indicating that the total amount outstanding under the Term Loan was \$1,481,656,507.70.

Response No. 70: Undisputed.

Statement No. 71: Old GM paid the Term Loan Lenders the amount outstanding under the Term Loan.

Response No. 71: Undisputed that the Term Loan was repaid on June 30, 2009 pursuant to the terms and provisions of the DIP Order out of the proceeds of the \$33 billion DIP Credit Facility financing advanced by the United States Department of the Treasury and Export Development Canada. (DIP Order at Chapter 11 Case Docket Entry 2529; Duker Aff. at ¶ 31.)

Statement No. 72: On July 31, 2009, the Committee filed a complaint (the “**Complaint**”) commencing this adversary proceeding against JPMorgan and the Term Loan Lenders (collectively, the “**Defendants**”).

Response No. 72: Undisputed.

Statement No. 73: Pursuant to the Complaint, the Committee seeks to avoid the Lien as unperfected, avoid and recover all post-petition payments made to the Defendants, avoid and recover all payments made to the Defendants during the ninety days prior to the petition date, and disallow any claim of any Defendant until it has disgorged the applicable payment(s). (*Id.*)

Response No. 73: Undisputed. JPMCB refers the Court to the Committee’s Complaint dated and filed with the Court on July 31, 2009 for the complete and accurate terms contained therein. (Adversary Proceeding Docket Entry 1.)

Dated: New York, New York
August 5, 2010

KELLEY DRYE & WARREN LLP

By: /s/ John M. Callagy

John M. Callagy
Nicholas J. Panarella
Martin A. Krolewski

101 Park Avenue
New York, New York 10178
(212) 808-7800

Attorneys for Defendant
JPMorgan Chase Bank, N.A.