OBJECTION DEADLINE: June 20, 2016 at 4:00 p.m. (Eastern Time)
HEARING DATE AND TIME: June 27, 2016 at 11:00 a.m. (Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	Case No.: 09-50026 (MG)
	(Jointly Administered)
Debtors.	

NOTICE OF MOTION BY GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE BANKRUPTCY COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION, AND THE RULINGS IN CONNECTION THEREWITH

VERONICA ALAINE FOX
CLAUDIA LEMUS
TAMMIE CHAPMAN
CONSTANCE HAYNES-TIBBETTS

PLEASE TAKE NOTICE that upon the annexed Motion, dated June 1, 2016 (the "**Motion**"),[1] of General Motors LLC ("**New GM**"), pursuant to Sections 105 and 363 of the Bankruptcy Code, seeking the entry of an order to enforce the Sale Order and Injunction, entered by the Bankruptcy Court on July 5, 2009, and the Bankruptcy Court's rulings in connection therewith, a hearing will be held before the Honorable Martin Glenn, United States Bankruptcy Judge, in Room 523 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **June 27, 2016 at 11:00 a.m. (Eastern Time),** or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-242 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's filing system, and (b) by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at www.nysb.uscourts.gov), and served in accordance with General Order M-242, and on (i) King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036 (Attn: Arthur Steinberg and Scott Davidson), and (ii), Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654, (Attn: Richard C. Godfrey and Andrew B. Bloomer, P.C.) so as to be received no later than **June 20, 2016, at 4:00 p.m. (Eastern Time)** (the "**Objection Deadline**").

[1] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

PLEASE TAKE FURTHER NOTICE that if no responses or objections are timely filed and served with respect to the Motion, New GM may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: New York, New York
June 1, 2016

Respectfully submitted,

__/s/ Arthur Steinberg___

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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)**
	:	

MOTION BY GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE BANKRUPTCY COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION, AND THE RULINGS IN CONNECTION THEREWITH

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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 2

BACKGROUND FACTS 4

A. The Sale Order and Injunction and Sale Agreement 4

B. The 2014 Motions to Enforce 6

C. The April 2015 Decision and June 2015 Judgment 6

D. The November 2015 Decision and December 2015 Judgment 7

1. *Non-Ignition Switch Plaintiffs Cannot Assert Independent Claims or Seek Punitive Damages Against New GM* 8

2. *Non-Ignition Switch Plaintiffs Cannot Assert Duty to Warn Claims as Independent Claims* 9

3. *Failure to Recall and/or Retrofit Claims Were Not Assumed By New GM* 10

4. *Failure to Identify Defects Were not Assumed By New GM* 10

5. *Certain Allegations Cannot Be Made Against New GM* 11

E. The Fox Lawsuit 12

F. The Turner Lawsuits 15

BASIS FOR RELIEF 17

A. The State Court Plaintiffs Are Non-Ignition Switch Plaintiffs, And They Cannot Assert Independent Claims Against New GM 18

B. "Duty to Warn" Claims Asserted As Independent Claims Are Barred By the December 2015 Judgment 19

C. Claims Based On A Failure To Recall Or Failure to Identify Defects Are Not Assumed Liabilities 19

D. The State Court Plaintiffs Cannot Seek Punitive Damages Against New GM 20

E. The Turner Complaints Contain Allegations That Are Expressly Barred by the December 2015 Judgment 21

NOTICE.. 22

TABLE OF AUTHORITIES

Page(s)

Cases

Celotex Corp. v. Edwards,
514 U.S. 300 (1995) 4, 17

In re Gen. Motors Corp.,
407 B.R. 463 (Bankr. S.D.N.Y. 2009) 4

In re Lehman Bros. Holdings, Inc.,
No. 15-149-BR, 2016 WL 1212079 (2d Cir. Mar. 29, 2016) 4

In re Motors Liquidation Co.,
513 B.R. 467 (Bankr. S.D.N.Y. 2014) 17

In re Motors Liquidation Co.,
541 B.R. 104 (Bankr. S.D.N.Y 2015) 8, 9, 19, 20

Statutes

11 U.S.C. § 105 1

11 U.S.C. § 363 1

General Motors LLC (**"New GM"**), by its undersigned counsel, submits this motion ("**Motion to Enforce**") pursuant to 11 U.S.C. §§ 105 and 363, to enforce the Bankruptcy Court's Order entered on July 5, 2009 ("**Sale Order and Injunction**") approving the sale of assets from Motors Liquidation Company (f/k/a General Motors Corporation) ("**Old GM**") to New GM,[1] and the decisions and judgments entered by the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**" or "**Court**") in connection therewith, by

(i) directing the plaintiff ("**Fox Plaintiff**") and her counsel in the lawsuit ("**Fox Lawsuit**") captioned *Veronica Alaine Fox v. General Motors LLC, et al.* pending in the State Court of Cobb County, State of Georgia ("**Georgia State Court**"), Case No. 14A 3468-4, to amend her *Recast & Amended Complaint for Damages* ("**Fox Amended Complaint**")[2] so that it complies with the Sale Order and Injunction and the other Bankruptcy Court rulings;

(ii) directing the plaintiff ("**Lemus Plaintiff**") and her counsel in the lawsuit ("**Lemus Lawsuit**") captioned *Claudia Lemus v. General Motors LLC, et al.* pending in a Judicial District in New Mexico ("**New Mexico State Court**"), Case No. D-191-CV-2013-03270, to amend her Complaint ("**Lemus Complaint**")[3] so that it complies with the Sale Order and Injunction and the other Bankruptcy Court rulings;

(iii) directing the plaintiff ("**Chapman Plaintiff**") and her counsel in the lawsuit ("**Chapman Lawsuit**") captioned *Tammie Chapman v. General Motors LLC, et al.* pending in the Circuit Court of Pulaski County, Arkansas ("**Arkansas State Court**"), Case No. 60CV-15-3292, to amend her Complaint ("**Chapman Complaint**")[4] so that it complies with the Sale Order and Injunction and the other Bankruptcy Court rulings; and

(iv) directing the plaintiff ("**Tibbetts Plaintiff**") and her counsel in the lawsuit ("**Tibbetts Lawsuit**") captioned *Constance Haynes-Tibbetts v. Armando Saenz, et al.*, pending in the New Mexico State Court, Case No. D-292-CV-2015-04918, to

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[1] The full title of the Sale Order and Injunction is *Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (iii) Granting Related Relief.* A copy of the Sale Order and Injunction, and the accompanying Sale Agreement (as defined herein), is contained in the accompanying compendium of exhibits as **Exhibit "A."**

[2] A copy of the Fox Amended Complaint is contained in the compendium of exhibits as **Exhibit "B."**

[3] A copy of the Lemus Complaint is contained in the compendium of exhibits as **Exhibit "C."**

[4] A copy of the Chapman Complaint is contained in the compendium of exhibits as **Exhibit "D."**

amend her Complaint ("**Tibbetts Complaint**")[5] so that it complies with the Sale Order and Injunction and the other Bankruptcy Court rulings.[6]

PRELIMINARY STATEMENT

1. The continued prosecution of the State Court Lawsuits, in their present form, violate the Sale Order and Injunction, and the other applicable Bankruptcy Court rulings. Under these rulings, the State Court Plaintiffs are Non-Ignition Switch Plaintiffs[7] asserting Assumed Liabilities (in the form of negligence, strict liability and/or breach of warranty claims predicated on Old GM's conduct) under state law based on accidents involving Old GM vehicles (*i.e.*, (i) a 2004 Cadillac SRX (Fox Plaintiff), (ii) a 2008 GMC truck (Lemus Plaintiff), (iii) a 2004 Silverado C1500 pickup truck (Chapman Plaintiff), and (iv) a 2005 Cadillac SRX (Tibbetts Plaintiff)).[8] Significantly, the State Court Plaintiffs are also asserting Independent Claims against New GM, either as duty to warn claims, or as failure to recall and/or identify defect claims, for which they are seeking compensatory and punitive damages. The December 2015 Judgment, however, is clear that Non-Ignition Switch Plaintiffs like the State Court Plaintiffs may not assert Independent Claims for post-sale accidents involving Old GM vehicles. New GM did not assume punitive damages in connection with Assumed Liabilities. Despite these clear

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5 A copy of the Tibbetts Complaint is contained in the compendium of exhibits as **Exhibit "E."**

6 The Lemus Plaintiff, the Chapman Plaintiff and the Tibbetts Plaintiff are all represented by the same counsel, and each of the complaints contains similar issues. These three plaintiffs will be collectively referred to herein as the "**Turner Plaintiffs**," and their lawsuits will be collectively referred to herein as the "**Turner Lawsuits.**" Where applicable, the Fox Plaintiff and the Turner Plaintiffs will be referred to herein as the "**State Court Plaintiffs**," and the Fox Lawsuit and the Turner Lawsuits will collectively be referred to as the "**State Court Lawsuits**." The four complaints at issue in the State Court Lawsuits will collectively be referred to herein as the "**Complaints**" where applicable.

7 Capitalized terms not otherwise defined in this Preliminary Statement are defined in later sections of this Motion to Enforce.

8 New GM disputes that it is liable to any of the State Court Plaintiffs for any claims asserted in their Complaints.

rulings, counsel for the State Court Plaintiffs have refused to amend their Complaints to comply with the Bankruptcy Court's rulings.[9]

2. In addition to the foregoing, in the Turner Lawsuits, the Turner Plaintiffs are asserting allegations in their complaints that are expressly prohibited by the December 2015 Judgment.

3. New GM first notified each of the State Court Plaintiffs of their failure to comply with the Sale Order and Injunction and other Bankruptcy Court rulings in August/September 2015. Following the December 2015 Judgment, New GM again notified each of the State Court Plaintiffs of their failure to comply with the controlling rulings of the Bankruptcy Court.

4. In response to New GM's latest demand for compliance with the Bankruptcy Court's rulings, counsel for the Fox Plaintiff accused New GM of raising bankruptcy issues as a tactic to delay the September 2016 trial of the Fox Lawsuit. He requested to take New GM's bankruptcy counsel's deposition in Georgia. New GM rejects these "sharp" litigation tactics; indeed, New GM urges this Court to decide the Motion to Enforce with all deliberate speed and to enforce compliance with the controlling Bankruptcy Court rulings.[10]

5. The Turner Plaintiffs have each refused to accept the rulings set forth in the December 2015 Judgment (and other Bankruptcy Court rulings) and have refused to appropriately amend their complaints.

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[9] In the Fox Lawsuit, counsel for the Fox Plaintiff has unequivocally stated his intention to proceed unabated to trial in Georgia State Court in September 2016.

[10] In response to New GM's requests following the December 2015 Judgment, many Non-Ignition Switch Plaintiffs are amending their complaints. Discussions with other plaintiffs are in process to determine if they will change their views or narrow issues in dispute. At this time, New GM expects that if additional enforcement motions for Non-Ignition Switch claims are necessary, they will be filed over the next few months in a consolidated matter, if practicable, to further the efficient administration of justice.

This Motion to Enforce is made now because a clear impasse has been reached with counsel for the State Court Plaintiffs. Moreover, the Fox Plaintiff has wrongfully accused New GM of seeking compliance with Bankruptcy Court rulings as a dilatory litigation tactic to delay an approaching trial date.

6. The law is settled that a party subject to a Court's injunction does not have the option simply to proceed in another court as if the injunction had not been issued. As the United States Supreme Court explained in *Celotex Corp. v. Edwards*, the rule is "well-established" that "'persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.'" 514 U.S. 300, 306 (1995). The State Court Plaintiffs' decisions to go forward in the State Courts as if the Bankruptcy Court's rulings do not apply to them are clear violations of the Sale Order and Injunction and the other controlling Bankruptcy Court rulings.[11]

7. As further explained below, this Court should direct the State Court Plaintiffs to amend their Complaints so that they are in full compliance with the controlling Bankruptcy Court rulings.

BACKGROUND FACTS

A. The Sale Order and Injunction and Sale Agreement

8. On June 1, 2009, Old GM commenced a case under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court. On that same day, it filed a motion seeking approval of the original version of the Sale Agreement, pursuant to which substantially all of Old GM's assets were to be sold to New GM. *See In re Gen. Motors Corp.*, 407 B.R. 463, 473 (Bankr. S.D.N.Y. 2009). The Sale Order and Injunction was entered on July 5, 2009, and the sale ("**363 Sale**") closed on July 10, 2009.

[11] New GM reserves all of its rights in connection with improper actions taken by the State Court Plaintiffs. *See In re Lehman Bros. Holdings, Inc.,* No. 15-149-BR, 2016 WL 1212079 (2d Cir. Mar. 29, 2016) (upholding a bankruptcy court order that imposed sanctions on a plaintiff who violated a bankruptcy sale order by commencing and continuing to prosecute a lawsuit against the purchaser of a debtor's assets where the purchaser bought the debtor's assets free and clear of claims and liens).

9. The Sale Agreement expressly allocated liabilities resulting from claims against Old GM into two categories.[12] Thus, claims asserted by Non-Ignition Switch Plaintiffs (*i.e.*, the State Court Plaintiffs) based on an Old GM vehicle are either Assumed Liabilities, *i.e*., an obligation of New GM, or Retained Liabilities that stayed with Old GM. *See generally* Sale Agreement § 2.3.

10. New GM assumed certain categories of liabilities for Old GM vehicles, including claims arising out of post-sale accidents that caused personal injury, loss of life or property damage, defined in the Sale Agreement (as amended) as "Product Liabilities." *See* Sale Agreement, § 2.3(a) (as amended by the First Amendment to the Sale Agreement). Certain of the State Court Plaintiffs' claims in the State Court Lawsuits fall within the definition of assumed Product Liabilities.

11. Paragraph 71 of the Sale Order and Injunction makes the Bankruptcy Court the gatekeeper to enforce its' terms by providing for this Court's exclusive jurisdiction over matters and claims regarding the 363 Sale, including jurisdiction to protect New GM against improper claims:

> This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the [Sale Agreement], all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, . . ., in all respects, including, but not limited to, retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the [Sale Agreement], except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets . . . . (Emphasis added.)[13]

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[12] As explained, *infra*, the June Judgment introduced a third category of Liabilities -- "Independent Claims." However, that category is limited to Ignition Switch Plaintiffs; ***none*** of the State Court Plaintiffs are Ignition Switch Plaintiffs.

[13] The December 2015 Judgment provided that certain claims asserted by Ignition Switch Plaintiffs "made it through the gate" so that a court other than the Bankruptcy Court could decide whether a viable Independent

B. The 2014 Motions to Enforce[14]

12. In 2014, New GM announced a number of recalls relating to Old GM vehicles and New GM Vehicles. Thereafter, lawsuits were filed around the country seeking to hold New GM liable in connection with, among other things, personal injury and economic loss claims allegedly arising from defects in Old GM vehicles. New GM filed three motions to enforce the Bankruptcy Court's Sale Order and Injunction. The overriding question before the Bankruptcy Court in the 2014 Motions to Enforce was whether the claims asserted against New GM violated the Sale Order and Injunction.

C. The April 2015 Decision and June 2015 Judgment

13. Since the Sale Order and Injunction was entered, the Bankruptcy Court has addressed numerous issues with respect to the interpretation and enforcement of the Sale Order and Injunction, and the Sale Agreement that it approved. In particular, the Bankruptcy Court has ruled on what types of claims may be asserted against New GM that concern Old GM vehicles, what allegations can be made in complaints that assert such claims, who may bring such claims, and what type of damages may be sought. Specifically, the Bankruptcy Court has held that the Sale Order and Injunction remains in full force and effect, and bars lawsuits relating to Old GM vehicles, except for (a) Independent Claims, which may be brought ***solely*** by Ignition Switch

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Claim had been asserted against New GM. Claims asserted as Independent Claims by Non-Ignition Switch Plaintiffs never "made it through the gate." They were barred by the December 2015 Judgment, and the Bankruptcy Court expressly reserved jurisdiction to enforce its' Order. *See* December 2015 Judgment, ¶ 37.

[14] The three motions to enforce the Sale Order and Injunction filed by New GM were (i) *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction*, dated April 21, 2014 [Dkt. No. 12620], (ii) *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Courts July 5, 2009 Sale Order and Injunction (Monetary Relief Actions, Other Than Ignition Switch Actions)*, dated August 1, 2014 [Dkt. No. 12808]; and (iii) *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Courts July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits*, dated August 1, 2014 [Dkt. No. 12807) (collectively, the "**2014 Motions to Enforce**").

Plaintiffs;[15] and (b) Assumed Liabilities. *See* Judgment entered by the Bankruptcy Court on June 1, 2015 [Dkt. No. 13177] ("**June 2015 Judgment**"),[16] ¶¶ 4, 5; Judgment entered by the Bankruptcy Court on December 4, 2015 [Dkt. No. 13563] ("**December 2015 Judgment**"),[17] ¶¶ 14, 39.

14. The Sale Order and Injunction was modified in the June 2015 Judgment because the Bankruptcy Court found that Ignition Switch Plaintiffs (as defined below) (but not any other group of plaintiffs) established a due process violation (and were prejudiced) in connection with Old GM's notice of the 363 Sale. The Sale Order and Injunction was modified solely to allow Ignition Switch Plaintiffs to assert Independent Claims (if viable under non-bankruptcy law) against New GM.

15. The June 2015 Judgment defines the term Ignition Switch Plaintiffs as those plaintiffs who assert claims against New GM based on the first three ignition switch recalls issued in February/March 2014. *See* June 2015 Judgment, at 1 n.1. The State Court Plaintiffs are not "Ignition Switch Plaintiffs;" instead, their claims relate to vehicles that were not subject to the applicable recalls, and the alleged issues with their vehicles that have nothing to do with ignition switches.

D. The November 2015 Decision and December 2015 Judgment

16. After entry of the June 2015 Judgment, various parties filed pleadings with the Bankruptcy Court ("**June Judgment Pleadings**") asserting that they should not be bound by the Bankruptcy Court rulings. Thereafter, on August 19, 2015, the Bankruptcy Court entered a Case

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15 The term "Independent Claims" is defined as "claims or causes of action ***asserted by Ignition Switch Plaintiffs*** against New GM (whether or not involving Old GM Vehicles) that are based solely on New GM's own, independent, post-Closing acts or conduct." June 2015 Judgment (as defined herein), ¶ 4 (emphasis added).

16 A copy of the June 2015 Judgment is contained in the compendium of exhibits as **Exhibit "F."**

17 A copy of the December 2015 Judgment is contained in the compendium of exhibits as **Exhibit "G."**

Management Order [Dkt. No. 13383][18] that directed parties in interest to submit their views on how best to address the remaining issues. After a hearing before the Bankruptcy Court on August 31, 2015, the Bankruptcy Court entered a Scheduling Order on September 3, 2015 [Dkt. No. 13416] ("**September 3 Scheduling Order**")[19] which set forth a briefing schedule to address, among other things, (i) whether plaintiffs may request punitive damages against New GM with respect to Old GM vehicles, and (ii) whether certain causes of action or allegations in complaints filed against New GM relating to Old GM vehicles were barred by the Sale Order and Injunction.

17. The September 3 Scheduling Order provided that "nothing in this Order is intended to nor shall preclude any other plaintiff's counsel (or *pro se* plaintiff), affected by the issues being resolved by this Court, from taking a position in connection with any such matters[.]" September 3 Scheduling Order, at p. 5. The Bankruptcy Court held a hearing on all matters set forth in the September 3 Scheduling Order on October 14, 2015.

1. Non-Ignition Switch Plaintiffs Cannot Assert Independent Claims or Seek Punitive Damages Against New GM

18. On November 9, 2015, the Bankruptcy Court entered its Decision ("**November 2015 Decision**")[20] with respect to the matters identified in the September 3 Scheduling Order. *See generally* November 2015 Decision, 541 B.R. 104. On December 4, 2015, the Bankruptcy Court entered its December 2015 Judgment, memorializing the rulings set forth in the November 2015 Decision. For claims based on Old GM vehicles for Non-Ignition Switch Plaintiffs (like the State Court Plaintiffs), the December 2015 Judgment conclusively held as follows:

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[18] A copy of the August 19, 2015 Case Management Order is contained in the compendium of exhibits as **Exhibit "H."**

[19] A copy of the September 3 Scheduling Order is contained in the compendium of exhibits as **Exhibit "I."**

[20] The November 2015 Decision is published as *In re Motors Liquidation Co.*, 541 B.R. 104 (Bankr. S.D.N.Y 2015).

> plaintiffs whose claims arise in connection with vehicles ***without*** the Ignition Switch Defect . . . ***are not entitled to assert Independent Claims*** against New GM with respect to vehicles manufactured and first sold by Old GM (an "Old GM Vehicle"). To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, ***such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015*** [Dkt. No. 13177].

December 2015 Judgment, ¶ 14 (emphasis added).

19. The December 2015 Judgment also specifically found that:

> New GM ***did not contractually assume liability for punitive damages*** from Old GM. Nor is New GM liable for punitive damages based on Old GM conduct under any other theories, such as by operation of law. Therefore, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM.
>
> A claim for punitive damages with respect to a post-Sale accident ***involving vehicles manufactured by Old GM with the Ignition Switch Defect may be asserted against New GM to the extent—but only to the extent—it relates to an otherwise viable Independent Claim and is based solely on New GM conduct or knowledge*** . . . .

December 2015 Judgment, ¶¶ 6-7 (emphasis added).

20. Accordingly, Non-Ignition Switch Plaintiffs, like each of the State Court Plaintiffs, cannot assert Independent Claims against New GM and may not seek punitive damages against New GM.

2. Non-Ignition Switch Plaintiffs Cannot Assert Duty to Warn Claims as Independent Claims

21. The November 2015 Decision and December 2015 Judgment also addressed a plaintiff's ability to assert a "duty to warn" claim against New GM, finding that in a case brought by a Non-Ignition Switch Plaintiff, a duty to warn claim could ***only*** be brought as an Assumed Liability (assuming such claim is viable under applicable non-bankruptcy law), but not as an Independent Claim, because Independent Claims can only be brought by Ignition Switch Plaintiffs. *See Motors Liquidation Co.*, 541 B.R. at 128-29; December 2015 Judgment, ¶ 20. Both the Fox Plaintiff and the Chapman Plaintiff assert a duty to warn claim; as neither of them

is an Ignition Switch Plaintiff, they cannot assert an Independent Claim based on a duty to warn against New GM.[21]

3. Failure to Recall and/or Retrofit Claims Were Not Assumed By New GM

22. The December 2015 Judgment also found that claims based on a failure to recall or retrofit an Old GM vehicle are not Assumed Liabilities. *See* December 2015 Judgment, ¶ 21 ("A duty to recall or retrofit is not an Assumed Liability, and New GM is not responsible for any failures of Old GM to do so."); *see also id.* ¶ 29 (same). Paragraph 30 of the Fox Amended Complaint makes an allegation which suggests a failure to recall and/or remedy the vehicle. This allegation is not specifically set forth in any Count in the Fox Amended Complaint. To the extent the Fox Plaintiff is asserting a failure to recall or remedy her vehicle, such claim is also barred as a Retained Liability of Old GM. The Lemus and Tibbetts Complaints assert failure to recall claims, which are barred. As noted, as Non-Ignition Switch Plaintiffs, the Fox, Lemus and Tibbetts Plaintiffs may not assert a failure to recall or remedy their vehicle as an Independent Claim.

4. Failure to Identify Defects Were not Assumed By New GM

23. The December 2015 Judgment further found that "[o]bligations, if any, that New GM had to identify or respond to defects in previously sold Old GM Vehicles were not Assumed Liabilities, and New GM is not responsible for any failures of Old GM to do so." December 2015 Judgment, ¶ 31. The Turner Complaints contain these prohibited claims. Again, as noted, Non-Ignition Switch Plaintiffs like the Turner Plaintiffs may not assert a failure to identify defects in their Old GM vehicle as an Independent Claim.

[21] The Fox Amended Complaint seeks to assert a duty to warn claim against New GM as an Independent Claim, not as an Assumed Liability. The Chapman Complaint is unclear as to whether the duty to warn claim is being asserted as an Independent Claim or as an Assumed Liability (which is permitted, if viable under non-bankruptcy law); the Chapman Plaintiff should be directed to amend the Chapman Complaint to make clear that the duty to warn claim is not an Independent Claim.

5. Certain Allegations Cannot Be Made Against New GM

24. In the December 2015 Judgment, the Bankruptcy Court described what types of allegations cannot be asserted by plaintiffs in pleadings with claims against New GM. Under the December 2015 Judgment, plaintiffs (like the Turner Plaintiffs) are prohibited from making allegations: (i) that New GM is the successor of Old GM (no matter how phrased) (*see* December 2015 Judgment, ¶ 16); (ii) that do not distinguish between Old GM and New GM (*see id.* ¶ 17); and (iii) that allege or suggest that New GM manufactured or designed an Old GM vehicle, or performed other conduct relating to an Old GM vehicle before the entry of the Sale Order and Injunction (*i.e*., July 10, 2009) (*see id.* ¶ 18).

25. Specifically, the December 2015 Judgment provides:

> Allegations that speak of New GM as the successor of Old GM (e.g. allegations that refer to New GM as the "successor of," a "mere continuation of," or a "de facto successor of" of Old GM) are proscribed by the Sale Order, April Decision and June Judgment, and complaints that contain such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

December 2015 Judgment, ¶ 16.

26. Moreover, the December 2015 Judgment provides:

> Allegations that do not distinguish between Old GM and New GM (e.g., referring to "GM" or "General Motors"), or between Old GM vehicles and New GM vehicles (e.g., referring to "GM-branded vehicles") . . . are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

Id., ¶ 17.

27. In addition, the December 2015 Judgment holds:

> Allegations that allege or suggest that New GM manufactured or designed an Old GM Vehicle, or performed other conduct relating to an Old GM Vehicle before the Sale Order, are proscribed by the Sale Order, April Decision and June Judgment . . . .

Id., ¶ 18.

28. Complaints containing allegations highlighted in paragraphs 16, 17 and 18 of the December 2015 Judgment "are and remain stayed, unless and until they are amended consistent with the [November] Decision and this Judgment." December 2015 Judgment, ¶¶ 16, 17, 18.

29. The December 2015 Judgment further provides that, except as modified by the June 2015 Judgment and April 2015 Decision, the Sale Order and Injunction remained "unmodified and in full force and effect, including, without limitation, paragraph AA of the Sale Order, which states that, except with respect to Assumed Liabilities, New GM is not liable for the actions or inactions of Old GM." *Id.*, ¶ 39.

30. The December 2015 Judgment was appealed but not with respect to the Bankruptcy Court's rulings (i) regarding Independent Claims, (ii) limiting punitive damages requests, and (iii) regarding improper allegations.

31. In sharp contrast to the State Court Plaintiffs, as a result of the December 2015 Judgment, the Lead Counsel (who litigated the issues resolved by the December 2015 Judgment in the Bankruptcy Court) in the Ignition Switch Multi-District Litigation ("**MDL**") amended their complaint in MDL-2543 pending before United States District Judge Furman to remove all Independent Claims relating to Non-Ignition Switch Plaintiffs that owned Old GM vehicles as of the 363 Sale. Clearly, Lead Counsel understood the impact of the December 2015 Judgment on Non-Ignition Switch Plaintiffs, and unlike the State Court Plaintiffs, modified their complaint as requested by the controlling Bankruptcy Court rulings.

E. The Fox Lawsuit

32. On December 23, 2014, the Fox Plaintiff commenced the Fox Lawsuit in the Georgia State Court. The Fox Plaintiff's vehicle (a 2004 Cadillac SRX) was manufactured, sold and delivered by Old GM (not New GM). The Fox Amended Complaint names, among others,

New GM as a defendant. The counts in the Fox Amended Complaint against New GM are (i) Negligence, (ii) Strict Liability, (iii) Failure to Warn, and (iv) Punitive Damages. The Fox Lawsuit relates to an allegedly defective roof structure.

33. The Fox Plaintiff was notified of the proceedings before the November 2015 Decision and the December 2015 Judgment. New GM sent counsel for the Fox Plaintiff a letter in September 2015 ("**New GM/Fox 2015 Letter**"),[22] explaining, among other things, that her request for punitive damages violated the Bankruptcy Court's rulings. Accompanying the New GM/Fox 2015 Letter was a copy of the September 3 Scheduling Order. The New GM/Fox 2015 Letter notified the Fox Plaintiff that:

> If you have any objection to the procedures set forth in the Scheduling Order, you must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this demand letter ("**Objection**"). Otherwise, you will be bound by the terms of the Scheduling Order and the determinations made pursuant thereto. If you believe there are issues that should be presented to the Bankruptcy Court relating to your lawsuit that will not otherwise be briefed and argued in accordance with the Scheduling Order, you must set forth that position, with specificity, in your Objection. The Bankruptcy Court will decide whether a hearing is required with respect to any Objection timely filed and, if so, will, promptly notify the parties involved.

New GM/Fox 2015 Letter, p. 3.

34. In response to the New GM/Fox 2015 Letter, the Fox Plaintiff sent New GM a letter dated September 9, 2015 ("**Fox/New GM 2015 Letter**"),[23] asserting that the September 3 Scheduling Order did not apply to the Fox Lawsuit, and "asking" several questions. New GM replied by e-mail transmission dated September 11, 2015 ("**New GM/Fox 2015 E-Mail**"),[24] informing the Fox Plaintiff that the issues raised in the Fox/New GM 2015 Letter would be

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[22] A copy of the New GM/Fox 2015 Letter (without exhibits) is contained in the compendium of exhibits as **Exhibit "J."**

[23] A copy of the Fox/New GM 2015 Letter is contained in the compendium of exhibits as **Exhibit "K."**

[24] A copy of the New GM/Fox 2015 E-Mail is contained in the compendium of exhibits as **Exhibit "L."**

addressed by the Bankruptcy Court pursuant to the September 3 Scheduling Order, and that the Fox Plaintiff could participate in that proceeding if she chose to.

35. Thereafter, counsel for the Fox Plaintiff was served with all pleadings the New GM filed by New GM in connection with the issues set forth in the September 3 Scheduling Order.[25] When counsel for the Fox Plaintiff questioned why he was receiving these pleadings, New GM again informed the Fox Plaintiff of the September 3 Scheduling Order, that certain issues would be decided by the Bankruptcy Court that would affect pending lawsuits (including the Fox Lawsuit), and that the Fox Plaintiff was being served with all pleadings so that she was fully informed about these proceedings in the Bankruptcy Court.[26] The Fox Plaintiff did not file any pleading in response to the September 3 Scheduling Order or the issues raised therein, and did not appear at the hearing, and did not appeal the December 2015 Judgment.

36. The Fox Plaintiff did not comply with the New GM/Fox 2015 Letter, or the November 2015 Decision or the December 2015 Judgment. On May 16, 2016, New GM sent the Fox Plaintiff another letter, explaining that the complaint contained certain allegations, claims and damage requests that violate the Bankruptcy Court rulings. The Fox Plaintiff responded by stating that he would revise the complaint, but demanded that New GM's counsel provide dates for his deposition. The Fox Plaintiff thereafter amended the complaint to address certain allegations therein but did not address the claims and damages request that violate the Bankruptcy Court rulings. Copies of the letters and e-mails relating to the foregoing exchanges are contained in the compendium of exhibits collectively as **Exhibit "O."**

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[25] Copies of relevant affidavits of service are contained in the compendium of exhibits as **Exhibit "M."**

[26] A copy of an e-mail string, dated from September 23, 2015 through September 28, 2015 is contained in the compendium of exhibits as **Exhibit "N."**

F. <u>The Turner Lawsuits</u>

37. On December 30, 2013, the Lemus Plaintiff commenced the Lemus Lawsuit in the New Mexico State Court. The Lemus Plaintiff's vehicle (a 2008 GMC truck) was manufactured, sold and delivered by Old GM (not New GM). The Lemus Complaint names, among others, New GM as a defendant. The counts in the Lemus Complaint against New GM are (i) Negligence (which includes a claim based on a failure to recall or a failure to notify the Lemus Plaintiff of a defect), (ii) Strict Liability, and (iii) Breach of Warranty. The Lemus Plaintiff seeks punitive damages from New GM. The Lemus Lawsuit relates to an alleged defective roof structure and seat belt system.

38. On July 21, 2015, the Chapman Plaintiff commenced the Chapman Lawsuit in the Arkansas State Court. The Chapman Plaintiff's vehicle (a 2004 Silverado C1500 pickup truck) was manufactured, sold and delivered by Old GM (not New GM). The Chapman Complaint names, among others, New GM as a defendant. The counts in the Chapman Complaint against New GM are (i) Negligence (which includes a claim based on an alleged duty to warn and an alleged failure to notify the Chapman Plaintiff of a defect), and (ii) Strict Liability. The Chapman Plaintiff seeks punitive damages from New GM. The Chapman Lawsuit relates to allegedly defective tire and safety belt systems.

39. On June 9, 2015, the Tibbetts Plaintiff commenced the Tibbetts Lawsuit in the New Mexico State Court. The Tibbetts Plaintiff's vehicle (a 2005 Cadillac SRX) was manufactured, sold and delivered by Old GM (not New GM). The Tibbetts Complaint names, among others, New GM as a defendant. The counts in the Tibbetts Complaint against New GM are (i) Negligence (which includes a claim based on an alleged failure to identify a defect and recall the subject vehicle), (ii) Strict Liability, and (iii) Breach of Warranty. The Tibbetts

Plaintiff seeks punitive damages from New GM. The Tibbetts Lawsuit relates to allegedly defective steering, handling and controllability features.

40. As with respect to the Fox Plaintiff, each of the Turner Plaintiffs was notified of the proceedings leading to the November 2015 Decision and the December 2015 Judgment. New GM sent counsel for the Turner Plaintiffs letters in August/September 2015 ("**New GM/Turner 2015 Letters**"),[27] explaining, among other things, that the Turner Plaintiffs' requests for punitive damages violated the Bankruptcy Court's rulings, and that if they disputed New GM's assertions, they should file a pleading with the Bankruptcy Court. Counsel for the Turner Plaintiffs responded by a letter in September 2015 ("**Turner/New GM 2015 Letter**"),[28] asserting that requests for punitive damages against New GM were not barred. In its response,[29] New GM explained the purpose of the September 3 Scheduling Order and informed the Turner Plaintiffs that they could participate in the briefing schedule set forth in the September 3 Scheduling Order.

41. The Turner Plaintiffs were served with a copy of the September 3 Scheduling Order, and all pleadings that New GM filed in connection with the issues set forth in the September 3 Scheduling Order.[30] The Turner Plaintiffs did not file any pleading in response to the September 3 Scheduling Order or the issues raised therein, did not appear at the hearing, and did not appeal the December 2015 Judgment.

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[27] Copies of the New GM/Turner 2015 Letters (without exhibits) are contained in the compendium of exhibits collectively as **Exhibit "P."**

[28] A copy of the Turner/New GM 2015 Letter is contained in the compendium of exhibits as **Exhibit "Q."**

[29] A copy of New GM's response to the Turner/New GM 2015 Letter is contained in the compendium of exhibits as **Exhibit "R."**

[30] Copies of relevant affidavits of service are contained in the compendium of exhibits as Exhibit "M."

42. The Turner Plaintiffs did not comply with the New GM/Turner 2015 Letter, or the November 2015 Decision or the December 2015 Judgment. On May 10, 2016, May 16, 2016 and May 18, 2016, New GM sent the Turner Plaintiffs additional letters, explaining that the Turner Complaints contained certain allegations, claims and damage requests that violate the Bankruptcy Court rulings. The Turner Plaintiffs responded, disputing all of New GM's assertions and claiming that Non-Ignition Switch Plaintiffs could assert Independent Claims against New GM. After New GM further explained its position in a subsequent letter, counsel for the Turner Plaintiffs responded, again disputing New GM's view of the December 2015 Judgment and the Bankruptcy Court's other rulings. Copies of the 2016 correspondence between counsel for New GM and counsel for the Turner Plaintiffs are contained in the compendium of exhibits collectively as **Exhibit "S."**

43. The State Court Plaintiffs' strident refusal to comply with the controlling Bankruptcy Court rulings, and the upcoming trial dates in certain of the State Court Lawsuits, necessitated this motion.

BASIS FOR RELIEF

44. The State Court Plaintiffs do not have the choice of simply ignoring the Bankruptcy Court's Sale Order and Injunction and its multiple rulings addressing its effect on lawsuits filed against New GM. As the Supreme Court held in *Celotex*:

> If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded judgment creditors have done. . . . Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court's Section 105 Injunction in the federal courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law.

514 U.S. at 313; *see also In re Motors Liquidation Co*., 513 B.R. 467, 478 (Bankr. S.D.N.Y. 2014) ("As the Supreme Court held in *Celotex,* persons subject to an injunctive order issued by a

court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." (footnote omitted)). These settled principles bind the State Court Plaintiffs. They are subject to the Sale Order and Injunction and the Bankruptcy Court's other rulings, and are required to comply with them.

45. Despite being on notice of the Sale Order and Injunction, and the Bankruptcy Court's rulings in the April 2015 Decision, June 2015 Judgment, November 2015 Decision and December 2015 Judgment, the State Court Plaintiffs are ignoring specific provisions contained therein, and are proceeding in state court as though they are exempted from the rulings of the Bankruptcy Court.

A. The State Court Plaintiffs Are Non-Ignition Switch Plaintiffs, And They Cannot Assert Independent Claims Against New GM

46. None of the State Court Plaintiffs are "Ignition Switch Plaintiffs." The June 2015 Judgment defines the term "Ignition Switch Plaintiffs" as those plaintiffs who assert claims against New GM based on the first three ignition switch recalls issued in February/March 2014. *See* June 2015 Judgment, at 1 n.1. Each of the State Court Lawsuits relates to a vehicle that is not subject to the applicable recalls, and the alleged issue with the vehicle has nothing to do with the ignition switch.

47. Only Ignition Switch Plaintiffs can assert "Independent Claims" against New GM. The Bankruptcy Court defined the term "Independent Claims" as "claims or causes of action ***asserted by Ignition Switch Plaintiffs*** against New GM (whether or not involving Old GM Vehicles) that are based solely on New GM's own, independent, post-Closing acts or conduct." June 2015 Judgment, ¶ 4 (emphasis added).

48. The December 2015 Judgment also makes clear that Non-Ignition Switch Plaintiffs—like the State Court Plaintiffs—cannot assert Independent Claims against New GM. *See* December 2015 Judgment, ¶ 14.

49. Accordingly, as the State Court Plaintiffs are Non-Ignition Switch Plaintiffs, they are prohibited from asserting (except for Assumed Liabilities) any claims against New GM, including Independent Claims.

B. "Duty to Warn" Claims Asserted As Independent Claims Are Barred By the December 2015 Judgment

50. In the November 2015 Decision, the Bankruptcy Court found that a duty to warn claim could be brought against New GM as an Assumed Liability or, if the plaintiff is an Ignition Switch Plaintiff, an Independent Claim *See Motors Liquidation Co.*, 541 B.R. at 128-29.

51. Count Three in the Fox Amended Complaint is expressly based on New GM Conduct, and New GM's purported failure to warn the Fox Plaintiff. *See* Fox Amended Complaint, ¶¶ 49-52. Essentially, the Fox Plaintiff has attempted to plead her duty to warn claim as an Independent Claim, in a misguided effort to seek punitive damages against New GM. However, since the Fox Plaintiff is not an Ignition Switch Plaintiff, she cannot assert an Independent Claim based on a duty to warn against New GM, and it should be stricken from the Fox Amended Complaint.

52. Similarly, to the extent the Chapman Plaintiff is asserting her duty to warn claim as an Independent Claim, such claim should be stricken from the Chapman Complaint.

C. Claims Based On A Failure To Recall Or Failure to Identify Defects Are Not Assumed Liabilities

53. In the December 2015 Judgment, the Bankruptcy Court found that claims based on a failure to recall and/or a failure to identify defects are not Assumed Liabilities of New GM and, only Ignition Switch Plaintiffs can assert such claims against New GM as Independent

Claims. *See* December 2015 Judgment, ¶¶ 21, 29-32. The Turner Complaints contain these prohibited claims, and should be amended to strike same.

D. The State Court Plaintiffs Cannot Seek Punitive Damages Against New GM

54. Under the December 2015 Judgment, punitive damages against New GM arising from an Old GM vehicle can only be sought in connection with an Independent Claim, not an Assumed Liability. As demonstrated above, the State Court Plaintiffs cannot assert Independent Claims against New GM, and any request for punitive damages necessarily fails.

55. The State Court Plaintiffs' claims that are Assumed Liabilities also cannot form the basis for punitive damages against New GM. The Bankruptcy Court conclusively ruled that New GM did not assume punitive damages relating to Product Liabilities (as defined in the Sale Agreement). *See* December 2015 Judgment, ¶ 6.[31] Moreover, paragraph 7 of the December 2015 Judgment provides that only Ignition Switch Plaintiffs can assert Independent Claims and thus, they are the only plaintiffs that can seek punitive damages against New GM on account of Independent Claims.

56. Accordingly, based on the Bankruptcy Court's explicit rulings in the November 2015 Decision and December 2015 Judgment, New GM did not assume punitive damages in connection with Product Liabilities, and the State Court Plaintiffs are prohibited from seeking punitive damages from New GM in connection with any of their claims.

[31] As more fully discussed in the November 2015 Decision:

> The Post–Closing Accident Plaintiffs first argue that New GM contractually assumed claims for punitive damages. The Court finds that contention unpersuasive. It can't agree with the Post–Closing Accident Plaintiffs' contention that the Sale Agreement unambiguously so provides. And once it looks at the totality of the contractual language, and extrinsic evidence, and employs common sense, it must agree with New GM's contention that New GM neither agreed to, nor did, contractually take on Old GM's punitive damages liability.

Id., 541 B.R. at 117.

E. The Turner Complaints Contain Allegations That Are Expressly Barred by the December 2015 Judgment

57. In the December 2015 Judgment, the Bankruptcy Court expressly set forth what types of allegations Plaintiffs cannot assert against New GM. Specifically, the Turner Plaintiffs are prohibited from making allegations: (i) that New GM is the successor to Old GM (no matter how phrased) (December 2015 Judgment, ¶ 16); (ii) that do not distinguish between Old GM and New GM (*see id.* ¶ 17); and (iii) that allege or suggest that New GM manufactured or designed an Old GM vehicle, or performed other conduct relating to an Old GM vehicle before the entry of the Sale Order and Injunction (*i.e.*, July 10, 2009) (*see id.* ¶ 18). The Turner Complaints contain allegations that directly violate these provisions of the December 2015 Judgment.

58. Specifically, paragraph 3 of the Chapman Complaint states, in part, that "Defendant, General Motors, LLC ('GM-LLC') is a Delaware Limited Liability Company ***and the successor to GM***.' . . . Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company 'MLC') ***and now known as*** GM-LLC . . . . [emphasis added]." In the Tibbetts Complaint, paragraph 5 contains the exact same language as in the Chapman Complaint. Paragraph 3 in the Lemus Complaint similarly asserts that "[p]rior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company 'MLC') ***and now known as*** GM-LLC . . . ." (emphasis added). Each of these allegations are barred by paragraph 16 of the December 2015 Judgment.

59. Moreover, the Turner Complaints contain allegations that simply refer to "GM" in a context that could be read as Old GM or New GM. *See* Lemus Complaint, ¶ 3; Chapman Complaint, ¶¶ 3, 4, 9, 10, 12, 15; Tibbetts Complaint, ¶¶ 5, 10. The term "GM" is not defined in any of the Turner Complaints. The Turner Complaints should be made clear which entity the term "GM" is referring to.

60. Each of the Turner Complaints also contains allegations that violate paragraph 18 of the December 2015 Judgment. An example from each complaint highlighting these prohibited allegations are:

(a) Lemus Complaint, ¶ 12: "The defective vehicle which forms the basis for this suit is a 2008 GMC truck designed, tested, manufactured, assembled, and/or distributed by GM-LLC." New GM was not in existence at the time the subject vehicle was "designed, tested, manufactured, assembled, and/or distributed . . . ."

(b) Chapman Complaint, ¶ 14: This paragraph references the "defendants" and asserts, numerous times they (which includes New GM) "negligently designed the vehicle . . . ." Again, New GM was not in existence at the time the subject vehicle was "designed".

(c) Tibbetts Complaint, ¶ 10: "The defective 2005 Cadillac SRX . . . which forms the basis for this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by Defendant GM-LLC." Once again, New GM was not in existence at the time the subject vehicle was "designed, tested, manufactured, marketed, assembled, and/or distributed . . . ."

61. The Turner Complaints contain other paragraphs that violate paragraph 18 of the December 2015 Judgment. *See* Lemus Complaint, ¶¶ 3, 14, 16, 19, 23-25, 27; Chapman Complaint, ¶¶ 3, 4, 8-11, 15; Tibbetts Complaint, ¶¶ 5, 35, 37, 38-44, 48, 52, 55, 56.[32]

62. Each of the paragraphs identified above must be amended because they are expressly prohibited by the December 2015 Judgment. Until appropriately amended, the Turner Lawsuits should be stayed pursuant to the express rulings in the December 2015 Judgment.

NOTICE

63. Notice of this Motion to Enforce has been provided to counsel for the State Court Plaintiffs, and all entities that receive electronic notice from the Court's ECF system. New GM submits that such notice is sufficient and no other or further notice need be provided.

[32] Marked up versions of each of the Complaints, which highlight the offending provisions, are contained in the compendium of exhibits as **Exhibits "T", "U", "V" and "W."**

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

WHEREFORE, New GM respectfully requests that this Court enter an order, substantially in the form contained in the compendium of exhibits as **Exhibit "X,"** granting the relief sought herein, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 1, 2016

Respectfully submitted,

/s/ Arthur Steinberg

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Attorneys for General Motors LLC

OBJECTION DEADLINE: June 20, 2016 at 4:00 p.m. (Eastern Time)
HEARING DATE AND TIME: June 27, 2016 at 11:00 a.m. (Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	**Case No.: 09-50026 (MG)**
Debtors.	**(Jointly Administered)**

COMPENDIUM OF EXHIBITS FOR MOTION BY GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE BANKRUPTCY COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION, AND THE RULINGS IN CONNECTION THEREWITH

VERONICA ALAINE FOX
CLAUDIA LEMUS
TAMMIE CHAPMAN
CONSTANCE HAYNES-TIBBETTS

Index of Exhibits

Exhibit	Description
A.	*Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (iii) Granting Related Relief, entered by the Bankruptcy Court on July 5, 2009* (including the Amended and Restated Master Sale and Purchase Agreement (and all amendments)) [ECF No. 2968]
B.	Complaint, *Fox v. General Motors LLC and Atlanta Auto Brokers, Inc.*, Case No.: 14A 3468-4 (Cobb County, GA)
C.	Complaint, *Lemus v. General Motors LLC, et al.*, Case No.: D-101-CV-2013-03270 (1st Jud. Dist., Santa Fe Cty., NM)
D.	Complaint, *Chapman v. General Motors LLC, et al.*, Case No.: 60-CV-2015-3292 (Cir. Ct. of Pulaski Cty., AK)
E.	Complaint, *Tibbetts v. General Motors LLC, et al.*, Case No.: D-202-CV-2015-04918 (Dist. Ct., Bernalillo Cty., NM)
F.	*Judgment*, entered by the Bankruptcy Court, on June 1, 2015 [ECF No. 13177]
G.	*Judgment*, entered by the Bankruptcy Court on Dec. 4, 2015 [ECF No. 13563]
H.	*Case Management Order Re No-Strike, No-Stay, Objection, and GUC Trust Asset Pleadings*, entered by the Bankruptcy Court on Aug. 19, 2015 [ECF No. 13383]
I.	*Scheduling Order Regarding Case Management Order Re: No-Strike, No Stay, Objection, and GUC Trust Asset Pleading*, entered by the Bankruptcy Court on Sept. 3, 2015 [ECF No. 13416]
J.	*Letter from New GM to Counsel for Fox Plaintiff*, dated Sept. 4, 2015 (without exhibits)
K.	*Letter from Counsel for Fox Plaintiff to New GM*, dated Sept. 9, 2015
L.	*Email Correspondence between New GM and Counsel for Fox Plaintiff*, dated Sept. 11, 2015

M.	Certificate of Service for *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages from General Motors LLC Based on the Conduct of General Motors Corporation (with Exhibit)*, filed on Sept. 16, 2015 [ECF No. 13440] Certificate of Service for *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records*, filed on Sept. 21, 2015 [ECF No. 13457] Certificate of Service for *New GM Bellwether Letter, with Marked Bellwether Complaints, Pursuant to Scheduling Order dated September 3, 2015 (with Exhibits)*, filed on Sept. 22, 2015 [ECF No. 13464] Certificate of Service for *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages From General Motors LLC Based On The Conduct Of General Motors Corporation*, filed on Sept. 23, 2015 [ECF No. 13467] Certificate of Service for *Letter Filed on Behalf of General Motors LLC Regarding Other Plaintiffs' Complaints (with Exhibits)*, filed on Sept. 24, 2015 [ECF No. 13468] Certificate of Service for *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records*, filed on Oct. 1, 2015 [ECF No. 13485]
N.	*Email Correspondence between New GM and Counsel for Fox Plaintiff*, dated Sept. 23-28, 2015
O.	Compilation of Correspondence between New GM and Counsel for Fox Plaintiff in May 2016
P.	*Letter from New GM to Counsel for Chapman*, dated Sept. 1, 2015 (without exhibits) *Letter from New GM to Counsel for Tibbetts*, dated Aug. 26, 2015 (without exhibits) *Letter from New GM to Counsel for Lemus,* dated Aug. 31, 2015 (without exhibits)
Q.	*Letter from Counsel for Turner Plaintiffs to New GM,* dated Sept. 2, 2015
R.	*Email from New GM to Counsel for Turner Plaintiffs*, dated Sept. 11, 2015
S.	Compilation of Correspondence between New GM and Counsel for Turner Plaintiffs in May 2016

T.	Marked Up Version of: Complaint, *Fox v. General Motors LLC and Atlanta Auto Brokers, Inc.*, Case No.: 14A 3468-4 (Cobb County, GA)
U.	Marked Up Version of: Complaint, *Lemus v. General Motors LLC, et al.*, Case No.: D-101-CV-2013-03270 (1st Jud. Dist., Santa Fe Cty., NM)
V.	Marked Up Version of: Complaint, *Chapman v. General Motors LLC, et al.*, Case No.: 60-CV-2015-3292 (Cir. Ct. of Pulaski Cty., AK)
W.	Marked Up Version of: Complaint, *Tibbetts v. General Motors LLC, et al.*, Case No.: D-202-CV-2015-04918 (Dist. Ct., Bernalillo Cty., NM)
X.	Proposed Order (with Exhibits)

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., ***et al.*****,**	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER (I) AUTHORIZING SALE OF ASSETS PURSUANT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT WITH NGMCO, INC., A U.S. TREASURY-SPONSORED PURCHASER; (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated June 1, 2009 (the "**Motion**"), of General Motors Corporation ("**GM**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105, 363, and 365 of title 11, United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for, among other things, entry of an order authorizing and approving (A) that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, by and among GM and its Debtor subsidiaries (collectively, the "**Sellers**") and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC (the "**Purchaser**"), a purchaser sponsored by the United States Department of the Treasury (the "**U.S. Treasury**"), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as amended, the "**MPA**"), a copy of which is annexed hereto as Exhibit "A" (excluding the exhibits and schedules thereto); (B) the sale of the Purchased Assets[1] to the

[1] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Motion or the MPA.

Purchaser free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability; (C) the assumption and assignment of the Assumable Executory Contracts; (D) the establishment of certain Cure Amounts; and (E) the UAW Retiree Settlement Agreement (as defined below); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with this Court's Order, dated June 2, 2009 (the "**Sale Procedures Order**"), and it appearing that no other or further notice need be provided; and a hearing having been held on June 30 through July 2, 2009, to consider the relief requested in the Motion (the "**Sale Hearing**"); and upon the record of the Sale Hearing, including all affidavits and declarations submitted in connection therewith, and all of the proceedings had before the Court; and the Court having reviewed the Motion and all objections thereto (the "**Objections**") and found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors, their estates and creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein and in the Court's Decision dated July 5, 2009 (the "**Decision**") constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

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B. To the extent any of the following findings of fact or Findings of Fact in the Decision constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law or Conclusions of Law in the Decision constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion, the MPA, and the 363 Transaction pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, and 6006.

E. As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court, in light of the exigent circumstances of these chapter 11 cases and the wasting nature of the Purchased Assets and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the 363 Transaction, the procedures for assuming and assigning the Assumable Executory Contracts as described in the Sale Procedures Order and as modified herein (the "**Modified Assumption and Assignment Procedures**"), the UAW Retiree

Settlement Agreement, and the Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), and 6006(c) and in compliance with the Sale Procedures Order; (ii) such notice was good and sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, about the Sale Procedures, the sale of the Purchased Assets, the 363 Transaction, and the assumption and assignment of the Assumable Executory Contracts, and to reach all UAW-Represented Retirees about the UAW Retiree Settlement Agreement and the terms of that certain Letter Agreement, dated May 29, 2009, between GM, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "**UAW**"), and Stember, Feinstein, Doyle & Payne, LLC (the "**UAW Claims Agreement**") relating thereto; and (iii) no other or further notice of the Motion, the 363 Transaction, the Sale Procedures, the Modified Assumption and Assignment Procedures, the UAW Retiree Settlement Agreement, the UAW Claims Agreement, and the Sale Hearing or any matters in connection therewith is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, potential contingent warranty claims against the Debtors), the Publication Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. On June 1, 2009, this Court entered the Sale Procedures Order approving the Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. The Debtors received no bids under the Sale Procedures for the Purchased Assets. Therefore, the Purchaser's bid was designated as the Successful Bid pursuant to the Sale Procedures Order.

G. As demonstrated by (i) the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, in light of the exigent circumstances presented, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the MPA constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (d) the 363 Transaction is a sale of deteriorating assets and the only alternative to liquidation available for the Debtors; (e) if the 363 Transaction is not approved, the Debtors will be forced to cease operations altogether; (f) the failure to approve the 363 Transaction promptly will lead to systemic failure and dire consequences, including the loss of hundreds of thousands of auto-related jobs; (g) prompt approval of the 363 Transaction is the only means to preserve and maximize the value of the Debtors' assets; (h) the 363 Transaction maximizes fair value for the Debtors' parties in interest; (i) the Debtors are receiving fair value for the assets being sold; (j) the 363 Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including liquidation under chapters 7 or 11 of the Bankruptcy Code; (k) no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; (l) the consideration to be paid by the Purchaser under the MPA exceeds the liquidation value of the Purchased Assets; and (m) the Debtors' determination that the MPA constitutes the highest or best offer for the Purchased Assets and that the 363 Transaction represents a better alternative for the Debtors' parties in interest than an immediate liquidation constitute valid and sound exercises of the Debtors' business judgment.

H. The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest.

I. Approval of the MPA and consummation of the 363 Transaction at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets pursuant to the 363 Transaction prior to, and outside of, a plan of reorganization and for the immediate approval of the MPA and the 363 Transaction because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the 363 Transaction, time is of the essence in (i) consummating the 363 Transaction, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, their creditors, employees, the automotive industry, and the national economy that would be threatened by protracted proceedings in these chapter 11 cases.

K. The consideration provided by the Purchaser pursuant to the MPA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

09-50026-mg Doc 13634 Filed 06/01/16 Entered 06/01/16 16:25:54 Main Document
Pg 37 of 154

L. The 363 Transaction must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

M. The MPA was not entered into and none of the Debtors, the Purchaser, or the Purchasers' present or contemplated owners have entered into the MPA or propose to consummate the 363 Transaction for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser, nor the Purchaser's present or contemplated owners is entering into the MPA or proposing to consummate the 363 Transaction fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

N. In light of the extensive prepetition negotiations culminating in the MPA, the Purchaser's commitment to consummate the 363 Transaction is clear without the need to provide a good faith deposit.

O. Each Debtor (i) has full corporate power and authority to execute the MPA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MPA, (iii) has taken all corporate action necessary to authorize and approve the MPA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly provided for in the MPA which may be waived by the Purchaser, to consummate such transactions.

P. The consummation of the 363 Transaction outside of a plan of reorganization pursuant to the MPA neither impermissibly restructures the rights of the Debtors' creditors, allocates or distributes any of the sale proceeds, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The 363 Transaction does not constitute a *sub rosa* plan of reorganization. The 363 Transaction in no way dictates distribution of the Debtors' property to creditors and does not impinge upon any chapter 11 plan that may be confirmed.

Q. The MPA and the 363 Transaction were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, and advisors, has engaged in any conduct that would cause or permit the MPA to be avoided under 11 U.S.C. § 363(n).

R. The Purchaser is a newly-formed Delaware corporation that, as of the date of the Sale Hearing, is wholly-owned by the U.S. Treasury. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

S. Neither the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, or advisors is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

T. Upon the Closing of the 363 Transaction, the Debtors will transfer to the Purchaser substantially all of its assets. In exchange, the Purchaser will provide the Debtors with (i) cancellation of billions of dollars in secured debt; (ii) assumption by the Purchaser of a portion of the Debtors' business obligations and liabilities that the Purchaser will satisfy; and (iii) no less than 10% of the Common Stock of the Purchaser as of the Closing (100% of which the

Debtors' retained financial advisor values at between $38 billion and $48 billion) and warrants to purchase an additional 15% of the Common Stock of the Purchaser as of the Closing, the combination of which the Debtors' retained financial advisor values at between $7.4 billion and $9.8 billion (which amount, for the avoidance of doubt, does not include any amount for the Adjustment Shares).

U. The Purchaser, not the Debtors, has determined its ownership composition and capital structure. The Purchaser will assign ownership interests to certain parties based on the Purchaser's belief that the transfer is necessary to conduct its business going forward, that the transfer is to attain goodwill and consumer confidence for the Purchaser and to increase the Purchaser's sales after completion of the 363 Transaction. The assignment by the Purchaser of ownership interests is neither a distribution of estate assets, discrimination by the Debtors on account of prepetition claims, nor the assignment of proceeds from the sale of the Debtors' assets. The assignment of equity to the New VEBA (as defined in the UAW Retiree Settlement Agreement) and 7176384 Canada Inc. is the product of separately negotiated arm's-length agreements between the Purchaser and its equity holders and their respective representatives and advisors. Likewise, the value that the Debtors will receive on consummation of the 363 Transaction is the product of arm's-length negotiations between the Debtors, the Purchaser, the U.S. Treasury, and their respective representatives and advisors.

V. The U.S. Treasury and Export Development Canada ("**EDC**"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "**Existing UST Loan Agreement**"), the Secretary of the Treasury, in

consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is “necessary to promote financial market stability,” and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et seq. (“**EESA**”). The U.S. Treasury’s extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

W. The DIP Facility and the Existing UST Loan Agreement are loans and shall not be recharacterized. The Court has already approved the DIP Facility. The Existing UST Loan Agreement bears the undisputed hallmarks of a loan, not an equity investment. Among other things:

(i) The U.S. Treasury structured its prepetition transactions with GM as (a) a loan, made pursuant to and governed by the Existing UST Loan Agreement, in addition to (b) a separate, and separately documented, equity component in the form of warrants;

(ii) The Existing UST Loan Agreement has customary terms and covenants of a loan rather than an equity investment. For example, the Existing UST Loan Agreement contains provisions for repayment and pre-payment, and provides for remedies in the event of a default;

(iii) The Existing UST Loan Agreement is secured by first liens (subject to certain permitted encumbrances) on GM’s and the guarantors’ equity interests in most of their domestic subsidiaries and certain of their foreign subsidiaries (limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries), intellectual property, domestic real estate (other than manufacturing plants or facilities) inventory that was not pledged to other lenders, and cash and cash equivalents in the United States;

(iv) The U.S. Treasury also received junior liens on certain additional collateral, and thus, its claim for recovery on such collateral under the Existing UST Loan Agreement is, in part, junior to the claims of other creditors;

(v) the Existing UST Loan Agreement requires the grant of security by its terms, as well as by separate collateral documents, including: (a) a guaranty and

security agreement, (b) an equity pledge agreement, (c) mortgages and deeds of trust, and (d) an intellectual property pledge agreement;

(vi) Loans under the Existing UST Loan Agreement are interest-bearing with a rate of 3.00% over the 3-month LIBOR with a LIBOR floor of 2.00%. The Default Rate on this loan is 5.00% above the non-default rate.

(vii) The U.S. Treasury always treated the loans under the Existing UST Loan Agreement as debt, and advances to GM under the Existing Loan Agreement were conditioned upon GM's demonstration to the United States Government of a viable plan to regain competitiveness and repay the loans.

(viii) The U.S. Treasury has acted as a prudent lender seeking to protect its investment and thus expressly conditioned its financial commitment upon GM's meaningful progress toward long-term viability.

Other secured creditors of the Debtors also clearly recognized the loans under the Existing UST Loan Agreement as debt by entering into intercreditor agreements with the U.S. Treasury in order to set forth the secured lenders' respective prepetition priority.

X. This Court has previously authorized the Purchaser to credit bid the amounts owed under both the DIP Facility and the Existing UST Loan Agreement and held the Purchaser's credit bid to be, for all purposes, a "Qualified Bid" under the Sale Procedures Order.

Y. The Debtors, the Purchaser, and the UAW, as the exclusive collective bargaining representative of the Debtors' UAW-represented employees and the authorized representative of the persons in the Class and the Covered Group (as described in the UAW Retiree Settlement Agreement) (the "**UAW-Represented Retirees**") under section 1114(c) of the Bankruptcy Code, engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of "retiree benefits" within the meaning of section 1114(a) of the Bankruptcy Code and related matters. Conditioned upon the consummation of the 363 Transaction and the approval of the Bankruptcy Court granted in this Order, the Purchaser and the UAW will enter into that certain Retiree Settlement Agreement, dated as of the Closing Date (the "**UAW Retiree Settlement Agreement**"), which is Exhibit D to the MPA, which resolves

issues with respect to the provision of certain retiree benefits to UAW-Represented Retirees as described in the UAW Retiree Settlement Agreement. As set forth in the UAW Retiree Settlement Agreement, the Purchaser has agreed to make contributions of cash, stock, and warrants of the Purchaser to the New VEBA (as defined in the UAW Retiree Settlement Agreement), which will have the obligation to fund certain health and welfare benefits for the UAW-Represented Retirees. The New VEBA will also be funded by the transfer of assets from the Existing External VEBA and the assets in the UAW Related Account of the Existing Internal VEBA (each as defined in the UAW Retiree Settlement Agreement). GM and the UAW, as the authorized representative of the UAW-Represented Retirees, as well as the representatives for the class of plaintiffs in a certain class action against GM (the "**Class Representatives**"), through class counsel, Stemper, Feinstein, Doyle and Payne LLC ("**Class Counsel**"), negotiated in good faith the UAW Claims Agreement, which requires the UAW and the Class Representatives to take actions to effectuate the withdrawal of certain claims against the Debtors, among others, relating to retiree benefits in the event the 363 Transaction is consummated and the Bankruptcy Court approves, and the Purchaser becomes fully bound by, the UAW Retiree Settlement Agreement, subject to reinstatement of such claims to the extent of any adverse impact to the rights or benefits of UAW-Represented Retirees under the UAW Retiree Settlement Agreement resulting from any reversal or modification of the 363 Transaction, the UAW Retiree Settlement Agreement, or the approval of the Bankruptcy Court thereof, the foregoing as subject to the terms of, and as set forth in, the UAW Claims Agreement.

Z. Effective as of the Closing of the 363 Transaction, the Debtors will assume and assign to the Purchaser the UAW Collective Bargaining Agreement and all liabilities thereunder. The Debtors, the Purchaser, the UAW and Class Representatives intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings

09-50026-mg Doc 2968 Filed 07/05/09 Entered 07/05/09 23:17:51 Main Document
Pg 13 of 51

incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2).

AA. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability.

BB. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the

Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, and (ii) non-Debtor parties to the Assumable Executory Contracts who did not object, or who withdrew their Objections, to the 363 Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, and encumbrances, and (ii) non-Debtor parties to the Assumable Executory Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the 363 Transaction ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the MPA, no such liens or encumbrances shall attach to the proceeds of the 363 Transaction.

CC. Under the MPA, GM is transferring all of its right, title, and interest in the Memphis, TN SPO Warehouse and the White Marsh, MD Allison Transmission Plant (the "**TPC Property**") to the Purchaser pursuant to section 363(f) of the Bankruptcy Code free and clear of all liens (including, without limitation, the TPC Liens (as hereinafter defined)), claims, interests, and encumbrances (other than Permitted Encumbrances). For purposes of this Order, "**TPC Liens**" shall mean and refer to any liens on the TPC Property granted or extended pursuant to the TPC Participation Agreement and any claims relating to that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the "**TPC Participation Agreement**"), dated as of June 30, 2004, among GM, as Lessee, Wilmington Trust Company, a Delaware corporation, not in its individual capacity except as expressly stated herein but solely as Owner Trustee (the "**TPC Trustee**") under GM Facilities Trust No. 1999-I (the "**TPC Trust**"), as Lessor, GM, as Certificate Holder, Hannover Funding Company LLC, as

CP Lender, Wells Fargo Bank Northwest, N.A., as Agent, Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator, and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, collectively, as Purchasers (collectively, with CP Lender, Agent and Administrator, the "**TPC Lenders**"), together with the Operative Documents (as defined in the TPC Participation Agreements (the "**TPC Operative Documents**").

DD. The Purchaser would not have entered into the MPA and would not consummate the 363 Transaction (i) if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the "**Retained Liabilities**"), other than, in each case, the Assumed Liabilities. The Purchaser will not consummate the 363 Transaction unless this Court expressly orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in the Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Hearing or in the MPA.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection

with the consummation of the 363 Transaction, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Purchased Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Purchased Contracts and liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

FF. For the avoidance of doubt, and notwithstanding anything else in this Order to the contrary:

- The Debtors are neither assuming nor assigning to the Purchaser the agreement to provide certain retiree medical benefits specified in (i) the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (ii) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (together, the "**VEBA Settlement Agreement**");

- at the Closing, and in accordance with the MPA, the UAW Collective Bargaining Agreement, and all liabilities thereunder, shall be assumed by the Debtors and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. Assumption and assignment of the UAW Collective Bargaining Agreement is integral to the 363 Transaction and the MPA, are in the best interests of the Debtors and their estates, creditors, employees, and retirees, and represent the exercise of the Debtors' sound business judgment, enhances the value of the Debtors' estates, and does not constitute unfair discrimination;

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of the UAW-Represented Retirees under section 1114(c) of the Bankruptcy Code, GM, and the Purchaser engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the 363 Transaction, the UAW and the Purchaser have entered into the UAW Retiree Settlement Agreement, which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser (as referenced in paragraph Y herein). The New VEBA will also be funded by the transfer of the UAW Related Account from the Existing Internal VEBA and the assets of the Existing External VEBA to the New VEBA (each as defined in the UAW Retiree Settlement Agreement). The Debtors, the

Purchaser, and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2);

- the Debtors' sponsorship of the Existing Internal VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the MPA.

GG. The Debtors have (i) cured and/or provided adequate assurance of cure (through the Purchaser) of any default existing prior to the date hereof under any of the Purchased Contracts that have been designated by the Purchaser for assumption and assignment under the MPA, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation through the Purchaser to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code. The Modified Assumption and Assignment Procedures are fair, appropriate, and effective and, upon the payment by the Purchaser of all Cure Amounts (as hereinafter defined) and approval of the assumption and assignment for a particular Purchased Contract thereunder, the Debtors shall be forever released from any and all liability under the Purchased Contracts.

HH. The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein. The Debtors' non-Debtor Affiliates have acknowledged and agreed to the 363 Transaction and, as required by, and in accordance with, the MPA and the Transition Services Agreement, transferred any legal, equitable, or beneficial right, title, or interest they may have in or to the Purchased Assets to the Purchaser.

II. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) in conducting their business operations. The 363 Transaction may contemplate the transfer of certain personally identifiable information to the Purchaser in a manner that may not be consistent with certain aspects of their existing privacy policies. Accordingly, on June 2, 2009, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and such ombudsman was appointed on June 10, 2009. The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on July 1, 2009 (Docket No. 2873) (the "**Ombudsman Report**") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the facts, including the exigent circumstances surrounding the conditions of the sale of personally identifiable information in connection with the 363 Transaction. No showing has been made that the sale of personally identifiable information in connection with the 363 Transaction in accordance with the provisions of this Order violates applicable nonbankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the 363 Transaction.

JJ. Pursuant to Section 6.7(a) of the MPA, GM offered Wind-Down Agreements and Deferred Termination Agreements (collectively, the "**Deferred Termination Agreements**") in forms prescribed by the MPA to franchised motor vehicle dealers, including dealers authorized to sell and service vehicles marketed under the Pontiac brand (which is being discontinued), dealers authorized to sell and service vehicles marketed under the Hummer, Saturn and Saab brands (which may or may not be discontinued depending on whether the brands are sold to third parties) and dealers authorized to sell and service vehicles marketed

under brands which will be continued by the Purchaser. The Deferred Termination Agreements were offered as an alternative to rejection of the existing Dealer Sales and Service Agreements of these dealers pursuant to section 365 of the Bankruptcy Code and provide substantial additional benefits to dealers which enter into such agreements. Approximately 99% of the dealers offered Deferred Termination Agreements accepted and executed those agreements and did so for good and sufficient consideration.

KK. Pursuant to Section 6.7(b) of the MPA, GM offered Participation Agreements in the form prescribed by the MPA to dealers identified as candidates for a long term relationship with the Purchaser. The Participation Agreements provide substantial benefits to accepting dealers, as they grant the opportunity for such dealers to enter into a potentially valuable relationship with the Purchaser as a component of a reduced and more efficient dealer network. Approximately 99% of the dealers offered Participation Agreements accepted and executed those agreements.

LL. This Order constitutes approval of the UAW Retiree Settlement Agreement and the compromise and settlement embodied therein.

MM. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order to the full extent to which those rules provide, but that its Order should not become effective instantaneously. Thus the Court will shorten, but not wholly eliminate, the periods set forth in Fed.R.Bankr.P. 6004(h) and 6006, and expressly directs entry of judgment as set forth in accordance with the provisions of Paragraph 70 below.

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the MPA and the 363 Transaction is approved.

2. All Objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such Objections, are overruled on the merits other than a continuing Objection (each a "**Limited Contract Objection**") that does not contest or challenge the merits of the 363 Transaction and that is limited to (a) contesting a particular Cure Amount(s) (a "**Cure Objection**"), (b) determining whether a particular Assumable Executory Contract is an executory contract that may be assumed and/or assigned under section 365 of the Bankruptcy Code, and/or (c) challenging, as to a particular Assumable Executory Contract, whether the Debtors have assumed, or are attempting to assume, such contract in its entirety or whether the Debtors are seeking to assume only part of such contract. A Limited Contract Objection shall include, until resolved, a dispute regarding any Cure Amount that is subject to resolution by the Bankruptcy Court , or pursuant to the dispute resolution procedures established by the Sale Procedures Order or pursuant to agreement of the parties, including agreements under which an objection to the Cure Amount was withdrawn in connection with a reservation of rights under such dispute resolution procedures. Limited Contract Objections shall not constitute objections to the 363 Transaction, and to the extent such Limited Contract Objections remain continuing objections to be resolved before the Court, the hearing to consider each such Limited Contract Objection shall be adjourned to August 3, 2009 at 9:00a.m. (the "**Limited Contract Objection Hearing**"). Within two (2) business days of the entry of this Order, the Debtors shall serve upon each of the counterparties to the remaining Limited Contract Objections a notice of the Limited Contract Objection Hearing. The Debtors or any party that withdraws, or has withdrawn, a Limited

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Contract Objection without prejudice shall have the right, unless it has agreed otherwise, to schedule the hearing to consider a Limited Contract Objection on not less than fifteen (15) days notice to the Debtors, the counterparties to the subject Assumable Executory Contracts, the Purchaser, and the Creditors' Committee, or within such other time as otherwise may be agreed by the parties.

Approval of the MPA

3. The MPA, all transactions contemplated thereby, and all the terms and conditions thereof (subject to any modifications contained herein) are approved. If there is any conflict between the MPA, the Sale Procedures Order, and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the MPA and consummate the 363 Transaction pursuant to, and in accordance with, the terms and provisions of the MPA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the MPA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the MPA and effectuate the 363 Transaction, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the MPA.

6. This Order and the MPA shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including

rights or claims based on any successor or transferee liability, all non-Debtor parties to the Assumable Executory Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MPA or this Order.

Transfer of Purchased Assets Free and Clear

7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims

09-50026-reg Doc 2968 Filed 07/05/09 Entered 07/05/09 23:12:15 Main Document
Pg 24 of 184

based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents

and instruments necessary and appropriate to consummate the transactions contemplated by the MPA.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. On the Closing of the 363 Transaction, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest, is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance (other than Permitted Encumbrances), or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Sellers or the Purchased Assets (other than Permitted Encumbrances) shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (a) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which

shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets.

13. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the 363 Transaction.

14. Following the Closing of the 363 Transaction, no holder of any lien, claim, encumbrance, or other interest (other than Permitted Encumbrances) shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their chapter 11 cases.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the MPA and this Order; *provided, however*, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the 363 Transaction contemplated by the MPA.

17. From and after the Closing, the Purchaser shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety

Code, and similar Laws, in each case, to the extent applicable in respect of motor vehicles, vehicles, motor vehicle equipment, and vehicle parts manufactured or distributed by the Sellers prior to the Closing.

18. Notwithstanding anything to the contrary in this Order or the MPA, (a) any Purchased Asset that is subject to any mechanic's, materialman's, laborer's, workmen's, repairman's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings, or any lien for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable, or delinquent (or which may be paid without interest or penalties) shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Commencement Date (or becomes valid, perfected and enforceable after the Commencement Date as permitted by section 546(b) or 362(b)(18) of the Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "**Continuing Lien**") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights, *provided, however,* that nothing, in this Order or the MPA shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in

the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Order or the MPA shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection.

Approval of the UAW Retiree Settlement Agreement

19. The UAW Retiree Settlement Agreement, the transactions contemplated therein, and the terms and conditions thereof, are fair, reasonable, and in the best interests of the retirees, and are approved. The Debtors, the Purchaser, and the UAW are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and to comply with the terms of the UAW Retiree Settlement Agreement, including the obligation of the Purchaser to reimburse the UAW for certain expenses relating to the 363 Transaction and the transition to the New VEBA arrangements. The amendments to the Trust Agreement (as defined in the UAW Retiree Settlement Agreement) set forth on Exhibit E to the UAW Retiree Settlement Agreement, are approved, and the Trust Agreement is reformed accordingly.

20. In accordance with the terms of the UAW Retiree Settlement Agreement, (I) as of the Closing, there shall be no requirement to amend the Pension Plan as set forth in section 15 of the Henry II Settlement (as such terms are defined in the UAW Retiree Settlement Agreement); (II) on the later of December 31, 2009, or the Closing of the 363 Transaction (the "**Implementation Date**"), (i) the committee and the trustees of the Existing External VEBA (as defined in the UAW Retiree Settlement Agreement) are directed to transfer to the New VEBA all assets and liabilities of the Existing External VEBA and to terminate the Existing External

VEBA within fifteen (15) days thereafter, as provided under Section 12.C of the UAW Retiree Settlement Agreement, (ii) the trustee of the Existing Internal VEBA is directed to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA within ten (10) business days thereafter as provided in Section 12.B of the UAW Retiree Settlement Agreement, and, upon the completion of such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date (each as defined in the UAW Retiree Settlement Agreement); and (III) all obligations of the Purchaser and the Sellers to provide Retiree Medical Benefits to members of the Class and Covered Group shall be governed by the UAW Retiree Settlement Agreement, and, in accordance with section 5.D of the UAW Retiree Settlement Agreement, all provisions of the Purchaser's Plan relating to Retiree Medical Benefits for the Class and/or the Covered Group shall terminate as of the Implementation Date or otherwise be amended so as to be consistent with the UAW Retiree Settlement Agreement (as each term is defined in the UAW Retiree Settlement Agreement), and the Purchaser shall not thereafter have any such obligations as set forth in Section 5.D of the UAW Retiree Settlement Agreement.

<u>Approval of GM's Assumption of the UAW Claims Agreement</u>

21. Pursuant to section 365 of the Bankruptcy Code, GM's assumption of the UAW Claims Agreement is approved, and GM, the UAW, and the Class Representatives are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Claims Agreement and comply with the terms of the UAW Claims Agreement.

Assumption and Assignment to the Purchaser of Assumable Executory Contracts

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon (a) the Closing of the 363 Transaction, (b) the occurrence of the Assumption Effective Date, and (c) the resolution of any relevant Limited Contract Objections, other than a Cure Objection, by order of this Court overruling such objection or upon agreement of the parties, the Debtors' assumption and assignment to the Purchaser of each Assumable Executory Contract (including, without limitation, for purposes of this paragraph 22) the UAW Collective Bargaining Agreement) is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

23. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Assumption Effective Date, as provided by, and in accordance with, the Sale Procedures Order, the Modified Assumption and Assignment Procedures, and the MPA, those Assumable Executory Contracts that have been designated by the Purchaser for assumption pursuant to sections 6.6 and 6.31 of the MPA and that are not subject to a Limited Contract Objection other than a Cure Objection, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems may be necessary to assign and transfer such Assumable Executory Contracts and Assumed Liabilities to the Purchaser. The Purchaser shall Promptly Pay (as defined below) the following (the "**Cure Amount**"): (a) all amounts due under such Assumable Executory Contract as of the Commencement Date as reflected on the website established by the Debtors (the "**Contract Website**"), which is referenced and is accessible as set forth in the Assumption and Assignment

Notice or as otherwise agreed to in writing by an authorized officer of the parties (for this purpose only, Susanna Webber shall be deemed an authorized officer of the Debtors) (the "**Prepetition Cure Amount**"), less amounts, if any, paid after the Commencement Date on account of the Prepetition Cure Amount (such net amount, the "**Net Prepetition Cure Amount**"), plus (b) any such amount past due and owing as of the Assumption Effective Date, as required under the Modified Assumption and Assignment Procedures, exclusive of the Net Prepetition Cure Amount. For the avoidance of doubt, all of the Debtors' rights to assert credits, chargebacks, setoffs, rebates, and other claims under the Purchased Contracts are purchased by and assigned to the Purchaser as of the Assumption Effective Date. As used herein, "**Promptly Pay**" means (i) with respect to any Cure Amount (or portion thereof, if any) which is undisputed, payment as soon as reasonably practicable, but not later than five (5) business days after the Assumption Effective Date, and (ii) with respect to any Cure Amount (or portion thereof, if any) which is disputed, payment as soon as reasonably practicable, but not later than five (5) business days after such dispute is resolved or such later date upon agreement of the parties and, in the event Bankruptcy Court approval is required, upon entry of a final order of the Bankruptcy Court. On and after the Assumption Effective Date, the Purchaser shall (i) perform any nonmonetary defaults that are required under section 365(b) of the Bankruptcy Code; *provided* that such defaults are undisputed or directed by this Court and are timely asserted under the Modified Assumption and Assignment Procedures, and (ii) pay all undisputed obligations and perform all obligations that arise or come due under each Assumable Executory Contract in the ordinary course. Notwithstanding any provision in this Order to the contrary, the Purchaser shall not be obligated to pay any Cure Amount or any other amount due with respect to any Assumable Executory Contract before such amount becomes due and payable under the applicable payment terms of such Contract.

24. The Debtors shall make available a writing, acknowledged by the Purchaser, of the assumption and assignment of an Assumable Executory Contract and the effective date of such assignment (which may be a printable acknowledgment of assignment on the Contract Website). The Assumable Executory Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the MPA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumable Executory Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumable Executory Contracts after such assumption and assignment to the Purchaser. Except as may be contested in a Limited Contract Objection, each Assumable Executory Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code and the Debtors may assume each of their respective Assumable Executory Contracts in accordance with section 365 of the Bankruptcy Code. Except as may be contested in a Limited Contract Objection other than a Cure Objection, the Debtors may assign each Assumable Executory Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumable Executory Contract that prohibit or condition the assignment of such Assumable Executory Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumable Executory Contract, constitute unenforceable antiassignment provisions which are void and of no force and effect in connection with the transactions contemplated hereunder. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumable Executory Contract have been satisfied, and, pursuant to section 365(k) of the Bankruptcy Code, the

Debtors are hereby relieved from any further liability with respect to the Assumable Executory Contracts, including, without limitation, in connection with the payment of any Cure Amounts related thereto which shall be paid by the Purchaser. At such time as provided in the Sale Procedures Order and the MPA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract. With respect to leases of personal property that are true leases and not subject to recharacterization, nothing in this Order or the MPA shall transfer to the Purchaser an ownership interest in any leased property not owned by a Debtor. Any portion of any of the Debtors' unexpired leases of nonresidential real property that purport to permit the respective landlords thereunder to cancel the remaining term of any such leases if the Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, the Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

25. Except in connection with any ongoing Limited Contract Objection, each non-Debtor party to an Assumable Executory Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or the Purchaser, their successors or assigns, or their respective property, any default arising prior to, or existing as of, the Commencement Date, or, against the Purchaser, any counterclaim, defense, or setoff (other than defenses interposed in connection with, or related to, credits, chargebacks, setoffs, rebates, and other claims asserted by the Sellers or the Purchaser in its capacity as assignee), or other claim asserted or assertable against the Sellers and (b) imposing or charging against the Debtors, the

09-50026-mg Doc 13634-1 Filed 06/01/16 Entered 06/01/16 16:25:54 Main Document
Pg 343 of 1

Purchaser, or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Sellers' assumption and assignment to the Purchaser of the Assumable Executory Contracts. The validity of such assumption and assignment of the Assumable Executory Contracts shall not be affected by any dispute between the Sellers and any non-Debtor party to an Assumable Executory Contract.

26. Except as expressly provided in the MPA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities other than certain Cure Amounts as provided in the MPA, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, and their estates.

27. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumable Executory Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumable Executory Contracts.

28. The authority hereunder for the Debtors to assume and assign an Assumable Executory Contract to the Purchaser includes the authority to assume and assign an Assumable Executory Contract, as amended.

29. Upon the assumption by a Debtor and the assignment to the Purchaser of any Assumable Executory Contract and the payment of the Cure Amount in full, all defaults under the Assumable Executory Contract shall be deemed to have been cured, and any counterparty to such Assumable Executory Contract shall be prohibited from exercising any rights or remedies against any Debtor or non-Debtor party to such Assumable Executory Contract based on an asserted default that occurred on, prior to, or as a result of, the Closing, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code.

30. The assignments of each of the Assumable Executory Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

31. Entry by GM into the Deferred Termination Agreements with accepting dealers is hereby approved. Executed Deferred Termination Agreements represent valid and binding contracts, enforceable in accordance with their terms.

32. Entry by GM into the Participation Agreements with accepting dealers is hereby approved and the offer by GM of entry into the Participation Agreements and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any Participation Agreement governing the obligations of Purchaser and its dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case by case basis in an appropriate forum other than this Court.

33. Nothing contained in the preceding two paragraphs shall impact the authority of any state or of the federal government to regulate Purchaser subsequent to the Closing.

34. Notwithstanding any other provision in the MPA or this Order, no assignment of any rights and interests of the Debtors in any federal license issued by the Federal Communications Commission ("**FCC**") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

TPC Property

35. The TPC Participation Agreement and the other TPC Operative Documents are financing transactions secured to the extent of the TPC Value (as hereinafter defined) and shall be Retained Liabilities.

36. As a result of the Debtors' interests in the TPC Property being transferred to the Purchaser free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances), including, without limitation, the TPC Lenders' Liens and Claims, pursuant to section 363(e) of the Bankruptcy Code, the TPC Lenders shall have an allowed secured claim in a total amount equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "**TPC Value**"), as determined at a valuation hearing conducted by this Court or by mutual agreement of the Debtors, the Purchaser, and the TPC Lenders (such claim, the "**TPC Secured Claim**"). Either the Debtors, the Purchaser, the TPC Lenders, or the Creditors' Committee may file a motion with this Court to determine the TPC Value on twenty (20) days notice.

37. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the TPC Secured Claim and for the sole benefit of the TPC Lenders, at the Closing or as soon as commercially practicable thereafter, but in any event not later than five (5) business days after the Closing, the Purchaser shall place $90,700,000 (the "**TPC Escrow Amount**") in cash into an interest-bearing escrow account (the "**TPC Escrow Account**") at a financial institution selected by the Purchaser and acceptable to the other parties (the "**Escrow Bank**"). Interest earned on the TPC Escrow Amount from the date of deposit through the date of the disposition of the proceeds of such account (the "**TPC Escrow Interest**") will follow principal, such that interest earned on the amount of cash deposited into the TPC Escrow Account equal to the TPC Value shall be paid to the TPC Lenders and interest earned on the balance of the TPC Escrow Amount shall be paid to the Purchaser.

38. Promptly after the determination of the TPC Value, an amount of cash equal to the TPC Secured Claim plus the TPC Lenders' pro rata share of the TPC Escrow Interest shall be released from the TPC Escrow Account and paid to the TPC Lenders (the "**TPC**

Payment") without further order of this Court. If the TPC Value is less than $90,700,000, the TPC Lenders shall have, in addition to the TPC Secured Claim, an aggregate allowed unsecured claim against GM's estate equal to the lesser of (i) $45,000,000 and (ii) the difference between $90,700,000 and the TPC Value (the "**TPC Unsecured Claim**").

39. If the TPC Value exceeds $90,700,000, the TPC Lenders shall be entitled to assert a secured claim against GM's estate to the extent the TPC Lenders would have an allowed claim for such excess under section 506 of the Bankruptcy Code (the "**TPC Excess Secured Claim**"); *provided, however*, that any TPC Excess Secured Claim shall be paid from the consideration of the 363 Transaction as a secured claim thereon and shall not be payable from the proceeds of the Wind-Down Facility; *and provided further, however,* that the Debtors, the Creditors' Committee, and all parties in interest shall have the right to contest the allowance and amount of the TPC Excess Secured Claim under section 506 of the Bankruptcy Code (other than to contest the TPC Value as previously determined by the Court). All parties' rights and arguments respecting the determination of the TPC Secured Claim are reserved; *provided, however*, that in consideration of the settlement contained in these paragraphs, the TPC Lenders waive any legal argument that the TPC Lenders are entitled to a secured claim equal to the face amount of their claim under section 363(f)(3) or any other provision of the Bankruptcy Code solely as a matter of law, including, without limitation, on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders' secured claims in order to transfer, or as a result of the transfer of, the TPC Property to the Purchaser. After the TPC Payment is made, any funds remaining in the TPC Escrow Account plus the Purchasers' pro rata share of the TPC Escrow Interest shall be released and paid to the Purchaser without further order of this Court. Upon the receipt of the TPC Payment by the TPC Lenders, other than any right to payment from GM on account of the TPC Unsecured Claim and the TPC Excess Secured Claim, the TPC

Lenders' Claims relating to the TPC Property shall be deemed fully satisfied and discharged, including, without limitation, any claims the TPC Lenders might have asserted against the Purchaser relating to the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents. For the avoidance of doubt, any and all claims of the TPC Lenders arising from or in connection with the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents shall be payable solely from the TPC Escrow Account or GM and shall be nonrecourse to the Purchaser.

40. The TPC Lenders shall not be entitled to payment of any fees, costs, or expenses (including legal fees) except to the extent that the TPC Value results in a TPC Excess Secured Claim and is thereby oversecured under the Bankruptcy Code and such claim is allowed by the Court as a secured claim under section 506 of the Bankruptcy Code.

41. In connection with the foregoing, and pursuant to Section 11.2 of the TPC Trust Agreement, GM, as the sole Certificate Holder and Beneficiary under the TPC Trust, together with the consent of GM as the Lessee, effective as of the date of the Closing, (a) exercises its election to terminate the TPC Trust and (b) in connection therewith, assumes all of the obligations of the TPC Trust and TPC Trustee under or contemplated by the TPC Operative Documents to which the TPC Trust or TPC Trustee is a party and all other obligations of the TPC Trust or TPC Trustee incurred under the TPC Trust Agreement (other than obligations set forth in clauses (i) through (iii) of the second sentence of Section 7.1 of the TPC Trust Agreement).

42. As a condition precedent to the 363 Transaction, in connection with the termination of the TPC Trust, effective as of the date of the Closing, all of the assets of the TPC Trust (the "**TPC Trust Assets**") shall be distributed to GM, as sole Certificate Holder and beneficiary under the TPC Trust, including, without limitation, the following:

(i) Industrial Development Revenue Real Property Note (General Motors Project) Series 1999-I, dated November 18, 1999, in the principal amount of $21,700,000, made by the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, to PVV Southpoint 14, LLC, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds (the "**TPC Tennessee Ground Lease**");

(ii) Real Property Lease Agreement dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Lessor, and PVV Southpoint 14, LLC, as Lessee, recorded as JW1262 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Real Property Lease dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1267 in the records of the Shelby County Register of Deeds;

(iii) Deed of Trust dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Grantor, in favor of Mid-South Title Corporation, as Trustee, for the benefit of PVV Southpoint 14, LLC, Beneficiary, recorded as JW1263 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(iv) Assignment of Rents and Lease dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Assignor, and PVV Southpoint 14, LLC, as Assignee, recorded as JW1264 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(v) The Tennessee Master Lease (as defined in the TPC Participation Agreement);

(vi) A certain tract of land being known and designated as Lot 1, as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Maryland, together with a certain tract of land being known and designated as "1.1865 Acre of Highway Widening," as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Baltimore, Maryland, saving and excepting from the above described property all that land conveyed to the State of Maryland to the use of the State Highway Administration of the Department of Transportation dated November 24, 2003, and

09-50026-reg Doc 9836 Filed 03/01/11 Entered 03/01/11 16:21:54 Main Document
Pg 39 of 51

recorded among the Land Records of Baltimore County in Liber 19569, folio 074, Maryland, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way, including, without limitation, those easements benefiting Parcel 1 set forth in the Declaration and Agreement Respecting Easements, Restrictions and Operations, between the TPC Trust, GM, and Whitemarsh Associates, LLC, recorded among the Land Records of Baltimore County in Liber 14019, folio 430, as amended (collectively, the "**Maryland Property**");

(vii) alternatively to the transfer of a direct interest in the Maryland Property pursuant to item (vi) above, if such documents are still extant, the following interests shall be transferred: (a) Ground Lease Agreement dated as of September 8, 1999, between the TPC Trustee of the TPC Trust. as lessor, and Maryland Economic Development Corporation, as lessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 565, (b) Sublease Agreement dated as of September 8, 1999, between the Maryland Economic Development Corporation, as sublessor, and the TPC Trustee of the TPC Trust, as sublessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 589, together with (c) all agreements, loan agreements, notes, rights, obligations, and interests held by the TPC Trustee of the TPC Trust and/or issued by the TPC Trustee of the TPC Trust in connection therewith; and

(viii) The Maryland Master Lease (as defined in the TPC Participation Agreement).

43. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the leasehold interest of the TPC Trustee of the TPC Trust under the TPC Tennessee Ground Lease and the lessor's interest under the Tennessee Master Lease shall be held by GM, as are the lessor's and lessee's interests under the Tennessee Master Lease, and as permitted by the TPC Trust Agreement, the Tennessee Master Lease shall hereby be terminated, and GM shall succeed to all rights of the lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

44. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the Maryland Property, the lessor's and lessee's interests under the Maryland Master Lease shall be held by GM, and as permitted by the TPC Trust Agreement, the Maryland Master Lease shall hereby be terminated, and GM shall succeed to all rights of the

lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

45. All of the TPC Trust Assets and the TPC Property are Purchased Assets under the MPA and shall be transferred by GM pursuant thereto to the Purchaser free and clear of all liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including, without limitation, any liens, claims, encumbrances, and interests of the TPC Lenders. To the extent any of the TPC Trust Assets are executory contracts and unexpired leases, they shall be Assumable Executory Contracts, which shall be assumed by GM and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code and the Sale Procedures Order.

Additional Provisions

46. Except for the Assumed Liabilities expressly set forth in the MPA, none of the Purchaser, its present or contemplated members or shareholders, its successors or assigns, or any of their respective affiliates or any of their respective agents, officials, personnel, representatives, or advisors shall have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the MPA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims,

including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

47. Effective upon the Closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or

the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. Notwithstanding the foregoing, a relevant taxing authority's ability to exercise its rights of setoff and recoupment are preserved.

48. Except for the Assumed Liabilities, or as expressly permitted or otherwise specifically provided for in the MPA or this Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Sellers arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided in this Order and the MPA, the Purchaser shall not be liable for any claims against the Sellers or any of their predecessors or Affiliates, and the Purchaser shall have no successor, transferee, or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Sellers or any obligations of the Sellers arising prior to the Closing.

49. The Purchaser has given fair and substantial consideration under the MPA for the benefit of the holders of liens, claims, encumbrances, or other interests. The consideration provided by the Purchaser for the Purchased Assets under the MPA is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

50. The consideration provided by the Purchaser for the Purchased Assets under the MPA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

51. If there is an Agreed G Transaction (determined no later than the due date, with extensions, of GM's tax return for the taxable year in which the 363 Transaction occurs), (i) the MPA shall, and hereby does, constitute a "plan" of GM and the Purchaser solely for purposes of sections 368 and 354 of the Tax Code, and (ii) the 363 Transaction, as set forth in the MPA, and the subsequent liquidation of the Sellers, are intended to constitute a tax reorganization of GM pursuant to section 368(a)(1)(G) of the Tax Code.

52. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated, and that the conveyances described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

53. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the MPA.

09-50026-reg Doc 2968 Filed 07/05/09 Entered 07/05/09 21:16:25 Main Document
Pg 44 of 51

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

Sellers' obligations under state "lemon law" statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.

57. Subject to further Court order and consistent with the terms of the MPA and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, (a) the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business, and (b) the cash management system maintained by the Debtors prior to the Closing, as such system may be necessary to effect the orderly administration of the Debtors' estates.

58. The Debtors are authorized to take any and all actions that are contemplated by or in furtherance of the MPA, including transferring assets between subsidiaries and transferring direct and indirect subsidiaries between entities in the corporate structure, with the consent of the Purchaser.

59. Upon the Closing, the Purchaser shall assume all liabilities of the Debtors arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Debtor, except for workers' compensation claims against the Debtors with respect to Employees residing in or employed in, as the case may be as defined by applicable law, the states of Alabama, Georgia, New Jersey, and Oklahoma.

60. During the week after Closing, the Purchaser shall send an e-mail to the Debtors' customers for whom the Debtors have usable e-mail addresses in their database, which will provide information about the Purchaser and procedures for consumers to opt out of being

contacted by the Purchaser for marketing purposes. For a period of ninety (90) days following the Closing Date, the Purchaser shall include on the home page of GM's consumer web site (www.gm.com) a conspicuous disclosure of information about the Purchaser, its procedures for consumers to opt out of being contacted by the Purchaser for marketing purposes, and a notice of the Purchaser's new privacy statement. The Debtors and the Purchaser shall comply with the terms of established business relationship provisions in any applicable state and federal telemarketing laws. The Dealers who are parties to Deferred Termination Agreements shall not be required to transfer personally identifying information in violation of applicable law or existing privacy policies.

61. Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

62. Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in

section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.

63. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order.

64. The Debtors shall comply with their tax obligations under 28 U.S.C. § 960, except to the extent that such obligations are Assumed Liabilities.

65. Notwithstanding anything contained in their respective organizational documents or applicable state law to the contrary, each of the Debtors is authorized and directed, upon and in connection with the Closing, to change their respective names, and any amendment to the organizational documents (including the certificate of incorporation) of any of the Debtors to effect such a change is authorized and approved, without Board or shareholder approval. Upon any such change with respect to GM, the Debtors shall file with the Court a notice of change of case caption within two (2) business days of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

66. The terms and provisions of the MPA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, and advisors.

67. The failure to specifically include any particular provisions of the MPA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MPA be authorized and approved in its entirety, except as modified herein.

68. The MPA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification,

amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on appropriate notice.

69. The provisions of this Order are nonseverable and mutually dependent on each other.

70. As provided in Fed.R.Bankr.P. 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry, and instead shall be effective as of 12:00 noon, EDT, on Thursday, July 9, 2009. The Debtors and the Purchaser are authorized to close the 363 Transaction on or after 12:00 noon on Thursday, July 9. Any party objecting to this Order must exercise due diligence in filing any appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Order becoming a Final Order.

Deleted: Pursuant to Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the 363 Transaction immediately upon entry of this Order.

71. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets, and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation

Agreements, stockholder agreements or other documents concerning the corporate governance of the Purchaser, and documents governed by foreign law, which disputes shall be adjudicated as

necessary under applicable law in any other court or administrative agency of competent

jurisdiction.

Dated: New York, York
July **5**, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

EXECUTION COPY

AMENDED AND RESTATED

MASTER SALE AND PURCHASE AGREEMENT

BY AND AMONG

GENERAL MOTORS CORPORATION,

SATURN LLC,

SATURN DISTRIBUTION CORPORATION

AND

CHEVROLET-SATURN OF HARLEM, INC.,

as Sellers

AND

NGMCO, INC.,

as Purchaser

DATED AS OF

JUNE 26, 2009

TABLE OF CONTENTS

DESCRIPTION **PAGE**

ARTICLE I DEFINITIONS 2

Section 1.1 Defined Terms. 2
Section 1.2 Other Interpretive Provisions. 23

ARTICLE II PURCHASE AND SALE 23

Section 2.1 Purchase and Sale of Assets; Assumption of Liabilities. 23
Section 2.2 Purchased and Excluded Assets. 23
Section 2.3 Assumed and Retained Liabilities. 28
Section 2.4 Non-Assignability. 32

ARTICLE III CLOSING; PURCHASE PRICE 33

Section 3.1 Closing. 33
Section 3.2 Purchase Price. 34
Section 3.3 Allocation. 35
Section 3.4 Prorations. 35
Section 3.5 Post-Closing True-up of Certain Accounts. 36

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS 37

Section 4.1 Organization and Good Standing. 37
Section 4.2 Authorization; Enforceability. 37
Section 4.3 Noncontravention; Consents. 37
Section 4.4 Subsidiaries. 38
Section 4.5 Reports and Financial Statements; Internal Controls. 38
Section 4.6 Absence of Certain Changes and Events. 39
Section 4.7 Title to and Sufficiency of Assets. 41
Section 4.8 Compliance with Laws; Permits. 41
Section 4.9 Environmental Laws. 42
Section 4.10 Employee Benefit Plans. 42
Section 4.11 Labor Matters. 44
Section 4.12 Investigations; Litigation. 45
Section 4.13 Tax Matters. 45
Section 4.14 Intellectual Property and IT Systems. 46
Section 4.15 Real Property. 47
Section 4.16 Material Contracts. 48
Section 4.17 Dealer Sales and Service Agreements for Continuing Brands. 49
Section 4.18 Sellers' Products. 49
Section 4.19 Certain Business Practices. 49
Section 4.20 Brokers and Other Advisors. 50

Section 4.21 Investment Representations. 50
Section 4.22 No Other Representations or Warranties of Sellers. 51

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER 51

Section 5.1 Organization and Good Standing. 51
Section 5.2 Authorization; Enforceability. 52
Section 5.3 Noncontravention; Consents. 52
Section 5.4 Capitalization. 53
Section 5.5 Valid Issuance of Shares. 54
Section 5.6 Investment Representations. 54
Section 5.7 Continuity of Business Enterprise. 55
Section 5.8 Integrated Transaction. 55
Section 5.9 No Other Representations or Warranties of Sellers. 55

ARTICLE VI COVENANTS 56

Section 6.1 Access to Information. 56
Section 6.2 Conduct of Business. 57
Section 6.3 Notices and Consents. 60
Section 6.4 Sale Procedures; Bankruptcy Court Approval. 61
Section 6.5 Supplements to Purchased Assets. 62
Section 6.6 Assumption or Rejection of Contracts. 62
Section 6.7 Deferred Termination Agreements; Participation Agreements. 65
Section 6.8 [Reserved] 66
Section 6.9 Purchaser Assumed Debt; Wind Down Facility. 66
Section 6.10 Litigation and Other Assistance. 66
Section 6.11 Further Assurances. 67
Section 6.12 Notifications. 68
Section 6.13 Actions by Affiliates. 69
Section 6.14 Compliance Remediation. 69
Section 6.15 Product Certification, Recall and Warranty Claims. 69
Section 6.16 Tax Matters; Cooperation. 69
Section 6.17 Employees; Benefit Plans; Labor Matters. 74
Section 6.18 TARP. 79
Section 6.19 Guarantees; Letters of Credit. 79
Section 6.20 Customs Duties. 79
Section 6.21 Termination of Intellectual Property Rights. 79
Section 6.22 Trademarks. 80
Section 6.23 Preservation of Records. 81
Section 6.24 Confidentiality. 81
Section 6.25 Privacy Policies. 82
Section 6.26 Supplements to Sellers' Disclosure Schedule. 82
Section 6.27 Real Property Matters. 82
Section 6.28 Equity Incentive Plans. 84
Section 6.29 Purchase of Personal Property Subject to Executory Contracts. 84

Section 6.30 Transfer of Riverfront Holdings, Inc. Equity Interests or Purchased Assets; Ren Cen Lease. 84
Section 6.31 Delphi Agreements. 85
Section 6.32 GM Strasbourg S.A. Restructuring. 85
Section 6.33 Holding Company Reorganization. 85
Section 6.34 Transfer of Promark Global Advisors Limited and Promark Investment Trustees Limited Equity Interests. 86
Section 6.35 Transfer of Equity Interests in Certain Subsidiaries. 86

ARTICLE VII CONDITIONS TO CLOSING 86

Section 7.1 Conditions to Obligations of Purchaser and Sellers. 86
Section 7.2 Conditions to Obligations of Purchaser. 87
Section 7.3 Conditions to Obligations of Sellers. 91

ARTICLE VIII TERMINATION 93

Section 8.1 Termination. 93
Section 8.2 Procedure and Effect of Termination. 94

ARTICLE IX MISCELLANEOUS 95

Section 9.1 Survival of Representations, Warranties, Covenants and Agreements and Consequences of Certain Breaches. 95
Section 9.2 Notices. 95
Section 9.3 Fees and Expenses; No Right of Setoff. 97
Section 9.4 Bulk Sales Laws. 97
Section 9.5 Assignment. 97
Section 9.6 Amendment. 98
Section 9.7 Waiver. 98
Section 9.8 Severability. 98
Section 9.9 Counterparts; Facsimiles. 98
Section 9.10 Headings. 98
Section 9.11 Parties in Interest. 98
Section 9.12 Governing Law. 99
Section 9.13 Venue and Retention of Jurisdiction. 99
Section 9.14 Waiver of Jury Trial. 99
Section 9.15 Risk of Loss. 99
Section 9.16 Enforcement of Agreement. 99
Section 9.17 Entire Agreement. 100
Section 9.18 Publicity. 100
Section 9.19 No Successor or Transferee Liability. 100
Section 9.20 Time Periods. 101
Section 9.21 Sellers' Disclosure Schedule. 101
Section 9.22 No Binding Effect. 101

EXHIBITS

Exhibit A	Form of Parent Warrant A
Exhibit B	Form of Parent Warrant B
Exhibit C	UAW Active Labor Modifications
Exhibit D	Form of UAW Retiree Settlement Agreement
Exhibit E	Form of VEBA Warrant
Exhibit F	Certain Excluded Owned Real Property
Exhibit G	Certain Retained Workers' Compensation Claims
Exhibit H	Form of Sale Procedures Order
Exhibit I	Form of Sale Approval Order
Exhibit J-1	Form of Deferred Termination Agreement for Saturn Discontinued Brand Dealer Agreements
Exhibit J-2	Form of Deferred Termination Agreement for Hummer Discontinued Brand Dealer Agreements
Exhibit J-3	Form of Deferred Termination Agreement for non-Saturn and non-Hummer Discontinued Brand Dealer Agreements and Excluded Continuing Brand Dealer Agreements
Exhibit K	Form of Participation Agreement
Exhibit L	Form of Subdivision Master Lease
Exhibit M	Form of Assignment and Assumption of Willow Run Lease
Exhibit N	Form of Ren Cen Lease
Exhibit O	Form of Equity Registration Rights Agreement
Exhibit P	Form of Bill of Sale
Exhibit Q	Form of Assignment and Assumption Agreement
Exhibit R	Form of Novation Agreement
Exhibit S	Form of Government Related Subcontract Agreement
Exhibit T	Form of Intellectual Property Assignment Agreement
Exhibit U	Form of Transition Services Agreement
Exhibit V	Form of Assignment and Assumption of Real Property Leases
Exhibit W	Form of Assignment and Assumption of Harlem Lease
Exhibit X	Form of Master Lease Agreement
Exhibit Y	Form of Certificate of Designation of Purchaser for Preferred Stock
Exhibit Z	VEBA Note Term Sheet

AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT (this "Agreement"), dated as of June 26, 2009, is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, on June 1, 2009 (the "Petition Date"), the Parties entered into that certain Master Sale and Purchase Agreement (the "Original Agreement"), and, in connection therewith, Sellers filed voluntary petitions for relief (the "Bankruptcy Cases") under Chapter 11 of Title 11, U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, pursuant to Sections 363 and 365 of the Bankruptcy Code, Sellers desire to sell, transfer, assign, convey and deliver to Purchaser, and Purchaser desires to purchase, accept and acquire from Sellers all of the Purchased Assets (as hereinafter defined) and assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities (as hereinafter defined), in each case, in accordance with the terms and subject to the conditions set forth in this Agreement and the Bankruptcy Code;

WHEREAS, on the Petition Date, Purchaser entered into equity subscription agreements with each of Canada, Sponsor and the New VEBA (each as hereinafter defined), pursuant to which Purchaser has agreed to issue, on the Closing Date (as hereinafter defined), the Canada Shares, the Sponsor Shares, the VEBA Shares, the VEBA Note and the VEBA Warrant (each as hereinafter defined);

WHEREAS, pursuant to the equity subscription agreement between Purchaser and Canada, Canada has agreed to (i) contribute on or before the Closing Date an amount of Indebtedness (as hereinafter defined) owed to it by General Motors of Canada Limited ("GMCL"), which results in not more than $1,288,135,593 of such Indebtedness remaining an obligation of GMCL, to Canada immediately following the Closing (the "Canadian Debt Contribution") and (ii) exchange immediately following the Closing the $3,887,000,000 loan to be made by Canada to Purchaser for additional shares of capital stock of Purchaser;

WHEREAS, the transactions contemplated by this Agreement are in furtherance of the conditions, covenants and requirements of the UST Credit Facilities (as hereinafter defined) and are intended to result in a rationalization of the costs, capitalization and capacity with respect to the manufacturing workforce of, and suppliers to, Sellers and their Subsidiaries (as hereinafter defined);

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, prior to the Closing (as hereinafter defined), engage in one or more related transactions (the "Holding Company Reorganization") generally designed to reorganize

Purchaser and one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Purchaser into a holding company structure that results in Purchaser becoming a direct or indirect, wholly-owned Subsidiary of a newly-formed Delaware corporation ("Holding Company"); and

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, direct the transfer of the Purchased Assets on its behalf by assigning its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties (as hereinafter defined) hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below or in the Sections referred to below:

"Adjustment Shares" has the meaning set forth in **Section 3.2(c)(i)**.

"Advisory Fees" has the meaning set forth in **Section 4.20**.

"Affiliate" has the meaning set forth in Rule 12b-2 of the Exchange Act.

"Affiliate Contract" means a Contract between a Seller or a Subsidiary of a Seller, on the one hand, and an Affiliate of such Seller or Subsidiary of a Seller, on the other hand.

"Agreed G Transaction" has the meaning set forth in **Section 6.16(g)(i)**.

"Agreement" has the meaning set forth in the Preamble.

"Allocation" has the meaning set forth in **Section 3.3**.

"Alternative Transaction" means the sale, transfer, lease or other disposition, directly or indirectly, including through an asset sale, stock sale, merger or other similar transaction, of all or substantially all of the Purchased Assets in a transaction or a series of transactions with one or more Persons other than Purchaser (or its Affiliates).

"Ancillary Agreements" means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Novation Agreement, the Government Related Subcontract Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the

Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

"Antitrust Laws" means all Laws that (i) are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or the lessening of competition through merger or acquisition or (ii) involve foreign investment review by Governmental Authorities.

"Applicable Employee" means all (i) current salaried employees of Parent and (ii) current hourly employees of any Seller or any of its Affiliates (excluding Purchased Subsidiaries and any dealership) represented by the UAW, in each case, including such current salaried and current hourly employees who are on (a) long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence or (b) layoff status or who have recall rights.

"Arms-Length Basis" means a transaction between two Persons that is carried out on terms no less favorable than the terms on which the transaction would be carried out by unrelated or unaffiliated Persons, acting as a willing buyer and a willing seller, and each acting in his own self-interest.

"Assignment and Assumption Agreement" has the meaning set forth in **Section 7.2(c)(v)**.

"Assignment and Assumption of Harlem Lease" has the meaning set forth in **Section 7.2(c)(xiii)**.

"Assignment and Assumption of Real Property Leases" has the meaning set forth in **Section 7.2(c)(xii)**.

"Assignment and Assumption of Willow Run Lease" has the meaning set forth in **Section 6.27(e)**.

"Assumable Executory Contract" has the meaning set forth in **Section 6.6(a)**.

"Assumable Executory Contract Schedule" means Section 1.1A of the Sellers' Disclosure Schedule.

"Assumed Liabilities" has the meaning set forth in **Section 2.3(a)**.

"Assumed Plans" has the meaning set forth in **Section 6.17(e)**.

"Assumption Effective Date" has the meaning set forth in **Section 6.6(d)**.

"Bankruptcy Avoidance Actions" has the meaning set forth in **Section 2.2(b)(xi)**.

"Bankruptcy Cases" has the meaning set forth in the Recitals.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Benefit Plans" has the meaning set forth in **Section 4.10(a)**.

"Bidders" has the meaning set forth in **Section 6.4(c)**.

"Bids" has the meaning set forth in **Section 6.4(c)**.

"Bill of Sale" has the meaning set forth in **Section 7.2(c)(iv)**.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York, New York.

"CA" has the meaning set forth in **Section 6.16(g)(i)**.

"Canada" means 7176384 Canada Inc., a corporation organized under the Laws of Canada, and a wholly-owned subsidiary of Canada Development Investment Corporation, and its successors and assigns.

"Canada Affiliate" has the meaning set forth in **Section 9.22**.

"Canada Shares" has the meaning set forth in **Section 5.4(c)**.

"Canadian Debt Contribution" has the meaning set forth in the Recitals.

"Claims" means all rights, claims (including any cross-claim or counterclaim), investigations, causes of action, choses in action, charges, suits, defenses, demands, damages, defaults, assessments, rights of recovery, rights of set-off, rights of recoupment, litigation, third party actions, arbitral proceedings or proceedings by or before any Governmental Authority or any other Person, of any kind or nature, whether known or unknown, accrued, fixed, absolute, contingent or matured, liquidated or unliquidated, due or to become due, and all rights and remedies with respect thereto.

"Claims Estimate Order" has the meaning set forth in **Section 3.2(c)(i)**.

"Closing" has the meaning set forth in **Section 3.1**.

"Closing Date" has the meaning set forth in **Section 3.1**.

"Collective Bargaining Agreement" means any collective bargaining agreement or other written or oral agreement, understanding or mutually recognized past practice with respect to Employees, between any Seller (or any Subsidiary thereof) and any labor organization or other Representative of Employees (including the UAW Collective Bargaining Agreement, local agreements, amendments, supplements and letters and memoranda of understanding of any kind).

"Common Stock" has the meaning set forth in **Section 5.4(b)**.

"Confidential Information" has the meaning set forth in **Section 6.24.**

"Confidentiality Period" has the meaning set forth in **Section 6.24**.

"Continuing Brand Dealer Agreement" means a United States dealer sales and service Contract related to one or more of the Continuing Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers' Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers' Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

"Continuing Brands" means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Buick, Cadillac, Chevrolet and GMC.

"Contracts" means all purchase orders, sales agreements, supply agreements, distribution agreements, sales representative agreements, employee or consulting agreements, leases, subleases, licenses, product warranty or service agreements and other binding commitments, agreements, contracts, arrangements, obligations and undertakings of any nature (whether written or oral, and whether express or implied).

"Copyright Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to reproduce, publicly display, publicly perform, distribute, create derivative works of or otherwise exploit any works covered by any Copyright.

"Copyrights" means all domestic and foreign copyrights, whether registered or unregistered, including all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship (including all compilations of information or marketing materials created by or on behalf of any Seller), acquired, owned or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof) and all reissues, renewals, restorations, extensions and revisions thereof.

"Cure Amounts" means all cure amounts payable in order to cure any monetary defaults required to be cured under Section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Purchaser of the Purchased Contracts.

"Damages" means any and all Losses, other than punitive damages.

"Dealer Agreement" has the meaning set forth in **Section 4.17**.

"Deferred Executory Contract" has the meaning set forth in **Section 6.6(c)**.

"Deferred Termination Agreements" has the meaning set forth in **Section 6.7(a)**.

"Delayed Closing Entities" has the meaning set forth in **Section 6.35**.

"Delphi" means Delphi Corporation.

"Delphi Motion" means the motion filed by Parent with the Bankruptcy Court in the Bankruptcy Cases on June 20, 2009, seeking authorization and approval of (i) the purchase, and guarantee of purchase, of certain assets of Delphi, (ii) entry into certain agreements in connection with the sale of substantially all of the remaining assets of Delphi to a third party, (iii) the assumption of certain Executory Contracts in connection with such sale, (iv) entry into an agreement with the PBGC in connection with such sale and (v) entry into an alternative transaction with the successful bidder in the auction for the assets of Delphi.

"Delphi Transaction Agreements" means (i) either (A) the MDA, the SPA, the Loan Agreement, the Operating Agreement, the Commercial Agreements and any Ancillary Agreements (in each case, as defined in the Delphi Motion), which any Seller is a party to, or (B) in the event that an Acceptable Alternative Transaction (as defined in the Delphi Motion) is consummated, any agreements relating to the Acceptable Alternative Transaction, which any Seller is a party to, and (ii) in the event that the PBGC Agreement is entered into at or prior to the Closing, the PBGC Agreement (as defined in the Delphi Motion) and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each of the agreements described in clauses (i) or (ii) hereof may be amended from time to time.

"DIP Facility" means that certain Secured Superpriority Debtor-in-Possession Credit Agreement entered into or to be entered into by Parent, as borrower, certain Subsidiaries of Parent listed therein, as guarantors, Sponsor, as lender, and Export Development Canada, as lender.

"Discontinued Brand Dealer Agreement" means a United States dealer sales and service Contract related to one or more of the Discontinued Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers' Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers' Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

"Discontinued Brands" means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Hummer, Saab, Saturn and Pontiac.

"Disqualified Individual" has the meaning set forth in **Section 4.10(f)**.

"Employees" means (i) each employee or officer of any of Sellers or their Affiliates (including (a) any current, former or retired employees or officers, (b) employees or officers on long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence and (c) employees on layoff status or with recall rights); (ii) each consultant or other service provider of any of Sellers or their Affiliates who is a former employee, officer or director of any of Sellers or their Affiliates; and (iii) each individual recognized under any Collective Bargaining Agreement as being employed by or having rights to

employment by any of Sellers or their Affiliates. For the avoidance of doubt, Employees includes all employees of Sellers or any of their Affiliates, whether or not Transferred Employees.

"Employment-Related Obligations" means all Liabilities arising out of, related to, in respect of or in connection with employment relationships or alleged or potential employment relationships with Sellers or any Affiliate of Sellers relating to Employees, leased employees, applicants, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, whether filed or asserted before, on or after the Closing. "Employment-Related Obligations" includes Claims relating to discrimination, torts, compensation for services (and related employment and withholding Taxes), workers' compensation or similar benefits and payments on account of occupational illnesses and injuries, employment Contracts, Collective Bargaining Agreements, grievances originating under a Collective Bargaining Agreement, wrongful discharge, invasion of privacy, infliction of emotional distress, defamation, slander, provision of leave under the Family and Medical Leave Act of 1993, as amended, or other similar Laws, car programs, relocation, expense-reporting, Tax protection policies, Claims arising out of WARN or employment, terms of employment, transfers, re-levels, demotions, failure to hire, failure to promote, compensation policies, practices and treatment, termination of employment, harassment, pay equity, employee benefits (including post-employment welfare and other benefits), employee treatment, employee suggestions or ideas, fiduciary performance, employment practices, the modification or termination of Benefit Plans or employee benefit plans, policies, programs, agreements and arrangements of Purchaser, including decisions to provide plans that are different from Benefit Plans, and the like. Without limiting the generality of the foregoing, with respect to any Employees, leased employees, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, "Employment-Related Obligations" includes payroll and social security Taxes, contributions (whether required or voluntary) to any retirement, health and welfare or similar plan or arrangement, notice, severance or similar payments required under Law, and obligations under Law with respect to occupational injuries and illnesses.

"Encumbrance" means any lien (statutory or otherwise), charge, deed of trust, pledge, security interest, conditional sale or other title retention agreement, lease, mortgage, option, charge, hypothecation, easement, right of first offer, license, covenant, restriction, ownership interest of another Person or other encumbrance.

"End Date" has the meaning set forth in **Section 8.1(b)**.

"Environment" means any surface water, groundwater, drinking water supply, land surface or subsurface soil or strata, ambient air, natural resource or wildlife habitat.

"Environmental Law" means any Law in existence on the date of the Original Agreement relating to the management or Release of, or exposure of humans to, any Hazardous Materials; or pollution; or the protection of human health and welfare and the Environment.

"Equity Incentive Plans" has the meaning set forth in **Section 6.28**.

"Equity Interest" means, with respect to any Person, any shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, options or rights for the purchase or other acquisition from such Person of such shares (or such other ownership or profits interests) and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting.

"Equity Registration Rights Agreement" has the meaning set forth in **Section 7.1(c)**.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is part of the same controlled group, or under common control with, or part of an affiliated service group that includes any Seller, within the meaning of Section 414(b), (c), (m) or (o) of the Tax Code or Section 4001(a)(14) of ERISA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Assets" has the meaning set forth in **Section 2.2(b)**.

"Excluded Cash" has the meaning set forth in **Section 2.2(b)(i)**.

"Excluded Continuing Brand Dealer Agreements" means all Continuing Brand Dealer Agreements, other than those that are Assumable Executory Contracts.

"Excluded Contracts" has the meaning set forth in **Section 2.2(b)(vii)**.

"Excluded Entities" has the meaning set forth in **Section 2.2(b)(iv)**.

"Excluded Insurance Policies" has the meaning set forth in **Section 2.2(b)(xiii)**.

"Excluded Personal Property" has the meaning set forth in **Section 2.2(b)(vi)**.

"Excluded Real Property" has the meaning set forth in **Section 2.2(b)(v)**.

"Excluded Subsidiaries" means, collectively, the direct Subsidiaries of Sellers included in the Excluded Entities and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

"Executory Contract" means an executory Contract or unexpired lease of personal property or nonresidential real property.

"Executory Contract Designation Deadline" has the meaning set forth in **Section 6.6(a)**.

"Existing Internal VEBA" has the meaning set forth in **Section 6.17(h)**.

"Existing Saginaw Wastewater Facility" has the meaning set forth in **Section 6.27(b)**.

"Existing UST Loan and Security Agreement" means the Loan and Security Agreement, dated as of December 31, 2008, between Parent and Sponsor, as amended.

"FCPA" has the meaning set forth in **Section 4.19**.

"Final Determination" means (i) with respect to U.S. federal income Taxes, a "determination" as defined in Section 1313(a) of the Tax Code or execution of an IRS Form 870-AD and, (ii) with respect to Taxes other than U.S. federal income Taxes, any final determination of Liability in respect of a Tax that, under applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise, including the expiration of a statute of limitations or a period for the filing of Claims for refunds, amended Tax Returns or appeals from adverse determinations.

"Final Order" means (i) an Order of the Bankruptcy Court or any other court or adjudicative body as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending, or (ii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such Order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such Order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that no Order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such Order.

"FSA Approval" has the meaning set forth in **Section 6.34**.

"G Transaction" has the meaning set forth in **Section 6.16(g)(i)**.

"GAAP" means the United States generally accepted accounting principles and practices as in effect from time to time, consistently applied throughout the specified period.

"GMAC" means GMAC LLC.

"GM Assumed Contracts" has the meaning set forth in the Delphi Motion.

"GMCL" has the meaning set forth in the Recitals.

"Governmental Authority" means any United States or non-United States federal, national, provincial, state or local government or other political subdivision thereof, any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

"Government Related Subcontract Agreement" has the meaning set forth in **Section 7.2(c)(vii)**.

"Harlem" has the meaning set forth in the Preamble.

"Hazardous Materials" means any material or substance that is regulated, or can give rise to Claims, Liabilities or Losses, under any Environmental Law or a Permit issued pursuant to any Environmental Law, including any petroleum, petroleum-based or petroleum-derived product, polychlorinated biphenyls, asbestos or asbestos-containing materials, lead and any noxious, radioactive, flammable, corrosive, toxic, hazardous or caustic substance (whether solid, liquid or gaseous).

"Holding Company" has the meaning set forth in the Recitals.

"Holding Company Reorganization" has the meaning set forth in the Recitals.

"Indebtedness" means, with respect to any Person, without duplication: (i) all obligations of such Person for borrowed money (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (ii) all obligations of such Person to pay amounts evidenced by bonds, debentures, notes or similar instruments (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (iii) all obligations of others, of the types set forth in clauses (i)-(ii) above that are secured by any Encumbrance on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, but only to the extent so secured; (iv) all unreimbursed reimbursement obligations of such Person under letters of credit issued for the account of such Person; (v) obligations of such Person under conditional sale, title retention or similar arrangements or other obligations, in each case, to pay the deferred purchase price for property or services, to the extent of the unpaid purchase price (other than trade payables and customary reservations or retentions of title under Contracts with suppliers, in each case, in the Ordinary Course of Business); (vi) all net monetary obligations of such Person in respect of interest rate, equity and currency swap and other derivative transaction obligations; and (vii) all guarantees of or by such Person of any of the matters described in clauses (i)-(vi) above, to the extent of the maximum amount for which such Person may be liable pursuant to such guarantee.

"Intellectual Property" means all Patents, Trademarks, Copyrights, Trade Secrets, Software, all rights under the Licenses and all concepts, ideas, know-how, show-how, proprietary information, technology, formulae, processes and other general intangibles of like nature, and other intellectual property to the extent entitled to legal protection as such, including products under development and methodologies therefor, in each case acquired, owned or licensed by a Seller.

"Intellectual Property Assignment Agreement" has the meaning set forth in **Section 7.2(c)(viii)**.

"Intercompany Obligations" has the meaning set forth in **Section 2.2(a)(iv)**.

"Inventory" has the meaning set forth in **Section 2.2(a)(viii)**.

"IRS" means the United States Internal Revenue Service.

"Key Subsidiary" means any direct or indirect Subsidiary (which, for the avoidance of doubt, shall only include any legal entity in which a Seller, directly or indirectly, owns greater than 50% of the outstanding Equity Interests in such legal entity) of Sellers (other than trusts) with assets (excluding any Intercompany Obligations) in excess of Two Hundred and Fifty Million Dollars ($250,000,000) as reflected on Parent's consolidated balance sheet as of March 31, 2009 and listed on Section 1.1C of the Sellers' Disclosure Schedule.

"Knowledge of Sellers" means the actual knowledge of the individuals listed on Section 1.1D of the Sellers' Disclosure Schedule as to the matters represented and as of the date the representation is made.

"Law" means any and all applicable United States or non-United States federal, national, provincial, state or local laws, rules, regulations, directives, decrees, treaties, statutes, provisions of any constitution and principles (including principles of common law) of any Governmental Authority, as well as any applicable Final Order.

"Landlocked Parcel" has the meaning set forth in **Section 6.27(c)**.

"Leased Real Property" means all the real property leased or subleased by Sellers, except for any such leased or subleased real property subject to any Contracts designated as Excluded Contracts.

"Lemon Laws" means a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.

"Liabilities" means any and all liabilities and obligations of every kind and description whatsoever, whether such liabilities or obligations are known or unknown, disclosed or undisclosed, matured or unmatured, accrued, fixed, absolute, contingent, determined or undeterminable, on or off-balance sheet or otherwise, or due or to become due, including Indebtedness and those arising under any Law, Claim, Order, Contract or otherwise.

"Licenses" means the Patent Licenses, the Trademark Licenses, the Copyright Licenses, the Software Licenses and the Trade Secret Licenses.

"Losses" means any and all Liabilities, losses, damages, fines, amounts paid in settlement, penalties, costs and expenses (including reasonable and documented attorneys', accountants', consultants', engineers' and experts' fees and expenses).

"LSA Agreement" means the Amended and Restated GM-Delphi Agreement, dated as of June 1, 2009, and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each such agreement may be amended from time to time.

"Master Lease Agreement" has the meaning set forth in **Section 7.2(c)(xiv)**.

"Material Adverse Effect" means any change, effect, occurrence or development that, individually or in the aggregate, has or would reasonably be expected to have a material adverse effect on the Purchased Assets, Assumed Liabilities or results of operations of Parent and its

Purchased Subsidiaries, taken as a whole; provided, however, that the term "Material Adverse Effect" does not, and shall not be deemed to, include, either alone or in combination, any changes, effects, occurrences or developments: (i) resulting from general economic or business conditions in the United States or any other country in which Sellers and their respective Subsidiaries have operations, or the worldwide economy taken as a whole; (ii) affecting Sellers in the industry or the markets where Sellers operate (except to the extent such change, occurrence or development has a disproportionate adverse effect on Parent and its Subsidiaries relative to other participants in such industry or markets, taken as a whole); (iii) resulting from any changes (or proposed or prospective changes) in any Law or in GAAP or any foreign generally accepted accounting principles; (iv) in securities markets, interest rates, regulatory or political conditions, including resulting or arising from acts of terrorism or the commencement or escalation of any war, whether declared or undeclared, or other hostilities; (v) resulting from the negotiation, announcement or performance of this Agreement or the DIP Facility, or the transactions contemplated hereby and thereby, including by reason of the identity of Sellers, Purchaser or Sponsor or any communication by Sellers, Purchaser or Sponsor of any plans or intentions regarding the operation of Sellers' business, including the Purchased Assets, prior to or following the Closing; (vi) resulting from any act or omission of any Seller required or contemplated by the terms of this Agreement, the DIP Facility or the Viability Plans, or otherwise taken with the prior consent of Sponsor or Purchaser, including Parent's announced shutdown, which began in May 2009; and (vii) resulting from the filing of the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by any Subsidiary of Parent) or from any action approved by the Bankruptcy Court (or any other court in connection with any such other proceedings).

"New VEBA" means the trust fund established pursuant to the Settlement Agreement.

"Non-Assignable Assets" has the meaning set forth in **Section 2.4(a)**.

"Non-UAW Collective Bargaining Agreements" has the meaning set forth in **Section 6.17(m)(i)**.

"Non-UAW Settlement Agreements" has the meaning set forth in **Section 6.17(m)(ii)**.

"Notice of Intent to Reject" has the meaning set forth in **Section 6.6(b)**.

"Novation Agreement" has the meaning set forth in **Section 7.2(c)(vi)**.

"Option Period" has the meaning set forth in **Section 6.6(b)**.

"Order" means any writ, judgment, decree, stipulation, agreement, determination, award, injunction or similar order of any Governmental Authority, whether temporary, preliminary or permanent.

"Ordinary Course of Business" means the usual, regular and ordinary course of business consistent with the past practice thereof (including with respect to quantity and frequency) as and to the extent modified in connection with (i) the implementation of the Viability Plans; (ii) Parent's announced shutdown, which began in May 2009; and (iii) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of

Parent), in the case of clause (iii), to the extent such modifications were approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any such other proceedings), or in furtherance of such approval.

"Organizational Document" means (i) with respect to a corporation, the certificate or articles of incorporation and bylaws or their equivalent; (ii) with respect to any other entity, any charter, bylaws, limited liability company agreement, certificate of formation, articles of organization or similar document adopted or filed in connection with the creation, formation or organization of a Person; and (iii) in the case of clauses (i) and (ii) above, any amendment to any of the foregoing other than as prohibited by **Section 6.2(b)(vi)**.

"Original Agreement" has the meaning set forth in the Recitals.

"Owned Real Property" means all real property owned by Sellers (including all buildings, structures and improvements thereon and appurtenances thereto), except for any such real property included in the Excluded Real Property.

"Parent" has the meaning set forth in the Preamble.

"Parent Employee Benefit Plans and Policies" means all (i) "employee benefit plans" (as defined in Section 3(3) of ERISA) and all pension, savings, profit sharing, retirement, bonus, incentive, health, dental, life, death, accident, disability, stock purchase, stock option, stock appreciation, stock bonus, other equity, executive or deferred compensation, hospitalization, post-retirement (including retiree medical or retiree life, voluntary employees' beneficiary associations, and multiemployer plans (as defined in Section 3(37) of ERISA)), severance, retention, change in control, vacation, cafeteria, sick leave, fringe, perquisite, welfare benefits or other employee benefit plans, programs, policies, agreements or arrangements (whether written or oral), including those plans, programs, policies, agreements and arrangements with respect to which any Employee covered by the UAW Collective Bargaining Agreement is an eligible participant, (ii) employment or individual consulting Contracts and (iii) employee manuals and written policies, practices or understandings relating to employment, compensation and benefits, and in the case of clauses (i) through (iii), sponsored, maintained, entered into, or contributed to, or required to be maintained or contributed to, by Parent.

"Parent SEC Documents" has the meaning set forth in **Section 4.5(a)**.

"Parent Shares" has the meaning set forth in **Section 3.2(a)(iii)**.

"Parent Warrant A" means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit A**.

"Parent Warrant B" means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit B**.

"Parent Warrants" means collectively, Parent Warrant A and Parent Warrant B.

"Participation Agreement" has the meaning set forth in **Section 6.7(b)**.

“Parties” means Sellers and Purchaser together, and “Party” means any of Sellers, on the one hand, or Purchaser, on the other hand, as appropriate and as the case may be.

“Patent Licenses” means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to manufacture, use, lease, or sell any invention, design, idea, concept, method, technique or process covered by any Patent.

“Patents” means all inventions, patentable designs, letters patent and design letters patent of the United States or any other country and all applications (regular and provisional) for letters patent or design letters patent of the United States or any other country, including applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, and all reissues, divisions, continuations, continuations in part, revisions, reexaminations and extensions or renewals of any of the foregoing.

“PBGC” has the meaning set forth in **Section 4.10(a)**.

“Permits” has the meaning set forth in **Section 2.2(a)(xi)**.

“Permitted Encumbrances” means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic’s, materialmen’s, laborer’s, workmen’s, repairmen’s, carrier’s liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways

abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

"Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity.

"Personal Information" means any information relating to an identified or identifiable living individual, including (i) first initial or first name and last name; (ii) home address or other physical address, including street name and name of city or town; (iii) e-mail address or other online contact information (e.g., instant messaging user identifier); (iv) telephone number; (v) social security number or other government-issued personal identifier such as a tax identification number or driver's license number; (vi) internet protocol address; (vii) persistent identifier (e.g., a unique customer number in a cookie); (viii) financial account information (account number, credit or debit card numbers or banking information); (ix) date of birth; (x) mother's maiden name; (xi) medical information (including electronic protected health information as defined by the rules and regulations of the Health Information Portability and Privacy Act, as amended); (xii) digitized or electronic signature; and (xiii) any other information that is combined with any of the above.

"Personal Property" has the meaning set forth in **Section 2.2(a)(vii)**.

"Petition Date" has the meaning set forth in the Recitals.

"PLR" has the meaning set forth in **Section 6.16(g)(i)**.

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"Preferred Stock" has the meaning set forth in **Section 5.4(b)**.

"Privacy Policy" means, with respect to any Person, any written privacy policy, statement, rule or notice regarding the collection, use, access, safeguarding and retention of Personal Information or "Personally Identifiable Information" (as defined by Section 101(41A) of the Bankruptcy Code) of any individual, including a customer, potential customer, employee or former employee of such Person, or an employee of any of such Person's automotive or parts dealers.

"Product Liabilities" has the meaning set forth in **Section 2.3(a)(ix)**.

"Promark UK Subsidiaries" has the meaning set forth in **Section 6.34**.

"Proposed Rejectable Executory Contract" has the meaning set forth in **Section 6.6(b)**.

"Purchase Price" has the meaning set forth in **Section 3.2(a)**.

"Purchased Assets" has the meaning set forth in **Section 2.2(a)**.

"Purchased Contracts" has the meaning set forth in **Section 2.2(a)(x)**.

"Purchased Subsidiaries" means, collectively, the direct Subsidiaries of Sellers included in the Transferred Entities, and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

"Purchased Subsidiaries Employee Benefit Plans" means any (i) defined benefit or defined contribution retirement plan maintained by any Purchased Subsidiary and (ii) severance, change in control, bonus, incentive or any similar plan or arrangement maintained by a Purchased Subsidiary for the benefit of officers or senior management of such Purchased Subsidiary.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Assumed Debt" has the meaning set forth in **Section 2.3(a)(i)**.

"Purchaser Expense Reimbursement" has the meaning set forth in **Section 8.2(b)**.

"Purchaser Material Adverse Effect" has the meaning set forth in **Section 5.3(a)**.

"Purchaser's Disclosure Schedule" means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Purchaser immediately prior to the execution of the Original Agreement.

"Quitclaim Deeds" has the meaning set forth in **Section 7.2(c)(x)**.

"Receivables" has the meaning set forth in **Section 2.2(a)(iii)**.

"Rejectable Executory Contract" has the meaning set forth in **Section 6.6(b)**.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, discarding, burying, abandoning or disposing into the Environment of Hazardous Materials that is prohibited under, or reasonably likely to result in a Liability under, any applicable Environmental Law.

"Relevant Information" has the meaning set forth in **Section 6.16(g)(ii)**.

"Relevant Transactions" has the meaning set forth in **Section 6.16(g)(i)**.

"Ren Cen Lease" has the meaning set forth in **Section 6.30**.

"Representatives" means all officers, directors, employees, consultants, agents, lenders, accountants, attorneys and other representatives of a Person.

"Required Subdivision" has the meaning set forth in **Section 6.27(a)**.

"Restricted Cash" has the meaning set forth in **Section 2.2(a)(ii)**.

"Retained Liabilities" has the meaning set forth in **Section 2.3(b)**.

"Retained Plans" means any Parent Employee Benefit Plan and Policy that is not an Assumed Plan.

"Retained Subsidiaries" means all Subsidiaries of Sellers and their respective direct and indirect Subsidiaries, as of the Closing Date, other than the Purchased Subsidiaries.

"Retained Workers' Compensation Claims" has the meaning set forth in **Section 2.3(b)(xii)**.

"RHI" has the meaning set forth in **Section 6.30**.

"RHI Post-Closing Period" has the meaning set forth in **Section 6.30**.

"S Distribution" has the meaning set forth in the Preamble.

"S LLC" has the meaning set forth in the Preamble.

"Saginaw Landfill" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Metal Casting Land" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Nodular Iron Land" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Service Contracts" has the meaning set forth in **Section 6.27(b)**.

"Sale Approval Order" has the meaning set forth in **Section 6.4(b)**.

"Sale Hearing" means the hearing of the Bankruptcy Court to approve the Sale Procedures and Sale Motion and enter the Sale Approval Order.

"Sale Procedures and Sale Motion" has the meaning set forth in **Section 6.4(b)**.

"Sale Procedures Order" has the meaning set forth in **Section 6.4(b)**.

"SEC" means the United States Securities and Exchange Commission.

"Secured Real Property Encumbrances" means all Encumbrances related to the Indebtedness of Sellers, which is secured by one or more parcels of the Owned Real Property, including Encumbrances related to the Indebtedness of Sellers under any synthetic lease arrangements at the White Marsh, Maryland GMPT - Baltimore manufacturing facility and the Memphis, Tennessee (SPO - Memphis) facility.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Seller" or "Sellers" has the meaning set forth in the Preamble.

"Seller Group" means any combined, unitary, consolidated or other affiliated group of which any Seller or Purchased Subsidiary is or has been a member for federal, state, provincial, local or foreign Tax purposes.

"Seller Key Personnel" means those individuals described on Section 1.1E of the Sellers' Disclosure Schedule.

"Seller Material Contracts" has the meaning set forth in **Section 4.16(a)**.

"Sellers' Disclosure Schedule" means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Sellers to Purchaser immediately prior to the execution of this Agreement, as updated and supplemented pursuant to **Section 6.5**, **Section 6.6** and **Section 6.26**.

"Series A Preferred Stock" has the meaning set forth in **Section 5.4(b)**.

"Settlement Agreement" means the Settlement Agreement, dated February 21, 2008 (as amended, supplemented, replaced or otherwise altered from time to time), among Parent, the UAW and certain class representatives, on behalf of the class of plaintiffs in the class action of

Int'l Union, UAW, et al. v. General Motors Corp., Civil Action No. 07-14074 (E.D. Mich. filed Sept. 9, 2007).

"Shared Executory Contracts" has the meaning set forth in **Section 6.6(d)**.

"Software" means all software of any type (including programs, applications, middleware, utilities, tools, drivers, firmware, microcode, scripts, batch files, JCL files, instruction sets and macros) and in any form (including source code, object code, executable code and user interface), databases and associated data and related documentation, in each case owned, acquired or licensed by any Seller.

"Software Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to use, modify, reproduce, distribute or create derivative works of any Software.

"Sponsor" means the United States Department of the Treasury.

"Sponsor Affiliate" has the meaning set forth in **Section 9.22**.

"Sponsor Shares" has the meaning set forth in **Section 5.4(c)**.

"Straddle Period" means a taxable period that includes but does not end on the Closing Date.

"Subdivision Master Lease" has the meaning set forth in **Section 6.27(a)**.

"Subdivision Properties" has the meaning set forth in **Section 6.27(a)**.

"Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, limited liability company, partnership or other legal entity (in each case, other than a joint venture if such Person is not empowered to control the day-to-day operations of such joint venture) of which such Person (either alone or through or together with any other Subsidiary) owns, directly or indirectly, more than fifty percent (50%) of the Equity Interests, the holder of which is entitled to vote for the election of the board of directors or other governing body of such corporation, limited liability company, partnership or other legal entity.

"Superior Bid" has the meaning set forth in **Section 6.4(d)**.

"TARP" means the Troubled Assets Relief Program established by Sponsor under the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7001 of Division B, Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time and any guidance issued by a regulatory authority thereunder and other related Laws in effect currently or in the future in the United States.

"Tax" or "Taxes" means any federal, state, provincial, local, foreign and other income, alternative minimum, accumulated earnings, personal holding company, franchise, capital stock,

net worth or gross receipts, income, alternative or add-on minimum, capital, capital gains, sales, use, ad valorem, franchise, profits, license, privilege, transfer, withholding, payroll, employment, social, excise, severance, stamp, occupation, premium, goods and services, value added, property (including real property and personal property taxes), environmental, windfall profits or other taxes, customs, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Authority, including any transferee, successor or secondary liability for any such tax and any Liability assumed by Contract or arising as a result of being or ceasing to be a member of any affiliated group or similar group under state, provincial, local or foreign Law, or being included or required to be included in any Tax Return relating thereto.

"Tax Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Taxing Authority" means, with respect to any Tax, the Governmental Authority thereof that imposes such Tax and the agency, court or other Person or body (if any) charged with the interpretation, administration or collection of such Tax for such Governmental Authority.

"Tax Return" means any return, report, declaration, form, election letter, statement or other information filed or required to be filed with any Governmental Authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof.

"Trademark Licenses" means all Contracts naming any Seller as licensor or licensee and providing for the grant of any right concerning any Trademark together with any goodwill connected with and symbolized by any such Trademark or Trademark Contract, and the right to prepare for sale or lease and sell or lease any and all products, inventory or services now or hereafter owned or provided by any Seller or any other Person and now or hereafter covered by such Contracts.

"Trademarks" means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers, and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof) and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks.

"Trade Secrets" means all trade secrets or Confidential Information, including any confidential technical and business information, program, process, method, plan, formula, product design, compilation of information, customer list, sales forecast, know-how, Software, and any other confidential proprietary intellectual property, and all additions and improvements to, and books and records describing or used in connection with, any of the foregoing, in each case, owned, acquired or licensed by any Seller.

"<u>Trade Secret Licenses</u>" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any rights with respect to Trade Secrets.

"<u>Transfer Taxes</u>" means all transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the transactions contemplated hereby and not otherwise exempted under the Bankruptcy Code, including relating to the transfer of the Transferred Real Property.

"<u>Transfer Tax Forms</u>" has the meaning set forth in **Section 7.2(c)(xi)**.

"<u>Transferred Employee</u>" has the meaning set forth in **Section 6.17(a)**.

"<u>Transferred Entities</u>" means all of the direct Subsidiaries of Sellers and joint venture entities or other entities in which any Seller has an Equity Interest, other than the Excluded Entities.

"<u>Transferred Equity Interests</u>" has the meaning set forth in **Section 2.2(a)(v)**.

"<u>Transferred Real Property</u>" has the meaning set forth in **Section 2.2(a)(vi)**.

"<u>Transition Services Agreement</u>" has the meaning set forth in **Section 7.2(c)(ix)**.

"<u>Transition Team</u>" has the meaning set forth in **Section 6.11(c)**.

"<u>UAW</u>" means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

"<u>UAW Active Labor Modifications</u>" means the modifications to the UAW Collective Bargaining Agreement, as agreed to in the 2009 Addendum to the 2007 UAW-GM National Agreement, dated May 17, 2009, the cover page of which is attached hereto as **<u>Exhibit C</u>** (the 2009 Addendum without attachments), which modifications were ratified by the UAW membership on May 29, 2009.

"<u>UAW Collective Bargaining Agreement</u>" means any written or oral Contract, understanding or mutually recognized past practice between Sellers and the UAW with respect to Employees, including the UAW Active Labor Modifications, but excluding the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between Parent and the UAW, and the Settlement Agreement. For purpose of clarity, the term "<u>UAW Collective Bargaining Agreement</u>" includes all special attrition programs, divestiture-related memorandums of understanding or implementation agreements relating to any unit or location where covered UAW-represented employees remain and any current local agreement between Parent and a UAW local relating to any unit or location where UAW-represented employees are employed as of the date of the Original Agreement. For purposes of clarity, nothing in this definition extends the coverage of the UAW-GM National Agreement to any Employee of S LLC, S Distribution, Harlem, a Purchased Subsidiary or one of Parent's Affiliates; nothing in this Agreement creates a direct employment relationship with a Purchased Subsidiary's employee or an Affiliate's Employee and Parent.

“UAW Retiree Settlement Agreement” means the UAW Retiree Settlement Agreement to be executed prior to the Closing, substantially in the form attached hereto as **Exhibit D**.

“Union” means any labor union, organization or association representing any employees (but not including the UAW) with respect to their employment with any of Sellers or their Affiliates.

“United States” or “U.S.” means the United States of America, including its territories and insular possessions.

“UST Credit Bid Amount” has the meaning set forth in **Section 3.2(a)(i)**.

“UST Credit Facilities” means (i) the Existing UST Loan and Security Agreement and (ii) those certain promissory notes dated December 31, 2008, April 22, 2009, May 20, 2009, and May 27, 2009, issued by Parent to Sponsor as additional compensation for the extensions of credit under the Existing UST Loan and Security Agreement, in each case, as amended.

“UST Warrant” means the warrant issued by Parent to Sponsor in consideration for the extension of credit made available to Parent under the Existing UST Loan and Security Agreement.

“VEBA Shares” has the meaning set forth in **Section 5.4(c)**.

“VEBA Note” has the meaning set forth in **Section 7.3(g)(iv)**.

“VEBA Warrant” means warrants to acquire 15,151,515 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit E**.

“Viability Plans” means (i) Parent’s Restructuring Plan for Long-Term Viability, dated December 2, 2008; (ii) Parent’s 2009-2014 Restructuring Plan, dated February 17, 2009; (iii) Parent’s 2009-2014 Restructuring Plan: Progress Report, dated March 30, 2009; and (iv) Parent’s Revised Viability Plan, all as described in Parent’s Registration Statement on Form S-4 (Reg. No 333-158802), initially filed with the SEC on April 27, 2009, in each case, as amended, supplemented and/or superseded.

“WARN” means the Workers Adjustment and Retraining Notification Act of 1988, as amended, and similar foreign, state and local Laws.

“Willow Run Landlord” means the Wayne County Airport Authority, or any successor landlord under the Willow Run Lease.

“Willow Run Lease” means that certain Willow Run Airport Lease of Land dated October 11, 1985, as the same may be amended, by and between the Willow Run Landlord, as landlord, and Parent, as tenant, for certain premises located at the Willow Run Airport in Wayne and Washtenaw Counties, Michigan.

“Willow Run Lease Amendment” has the meaning set forth in **Section 6.27(e)**.

"Wind Down Facility" has the meaning set forth in **Section 6.9(b)**.

Section 1.2 Other Interpretive Provisions. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole (including the Sellers' Disclosure Schedule) and not to any particular provision of this Agreement, and all Article, Section, Sections of the Sellers' Disclosure Schedule and Exhibit references are to this Agreement unless otherwise specified. The words "include", "includes" and "including" are deemed to be followed by the phrase "without limitation." The meanings given to terms defined herein are equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to "Dollars" or "$" are deemed references to lawful money of the United States. Unless otherwise specified, references to any statute, listing rule, rule, standard, regulation or other Law (a) include a reference to the corresponding rules and regulations and (b) include a reference to each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time, and to any section of any statute, listing rule, rule, standard, regulation or other Law, including any successor to such section. Where this Agreement states that a Party "shall" or "will" perform in some manner or otherwise act or omit to act, it means that the Party is legally obligated to do so in accordance with this Agreement.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets; Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, other than as set forth in **Section 6.30**, **Section 6.34** and **Section 6.35**, at the Closing, Purchaser shall (a) purchase, accept and acquire from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, free and clear of all Encumbrances (other than Permitted Encumbrances), Claims and other interests, the Purchased Assets and (b) assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities.

Section 2.2 Purchased and Excluded Assets.

(a) The "Purchased Assets" shall consist of the right, title and interest that Sellers possess and have the right to legally transfer in and to all of the properties, assets, rights, titles and interests of every kind and nature, owned, leased, used or held for use by Sellers (including indirect and other forms of beneficial ownership), whether tangible or intangible, real, personal or mixed, and wherever located and by whomever possessed, in each case, as the same may exist as of the Closing, including the following properties, assets, rights, titles and interests (but, in every case, excluding the Excluded Assets):

(i) all cash and cash equivalents, including all marketable securities, certificates of deposit and all collected funds or items in the process of collection at Sellers' financial institutions through and including the Closing, and all bank deposits, investment accounts and lockboxes related thereto, other than the Excluded Cash and Restricted Cash;

(ii) all restricted or escrowed cash and cash equivalents, including restricted marketable securities and certificates of deposit (collectively, "Restricted Cash") other than the Restricted Cash described in **Section 2.2(b)(ii)**;

(iii) all accounts and notes receivable and other such Claims for money due to Sellers, including the full benefit of all security for such accounts, notes and Claims, however arising, including arising from the rendering of services or the sale of goods or materials, together with any unpaid interest accrued thereon from the respective obligors and any security or collateral therefor, other than intercompany receivables (collectively, "Receivables");

(iv) all intercompany obligations ("Intercompany Obligations") owed or due, directly or indirectly, to Sellers by any Subsidiary of a Seller or joint venture or other entity in which a Seller or a Subsidiary of a Seller has any Equity Interest;

(v) (A) subject to **Section 2.4**, all Equity Interests in the Transferred Entities (collectively, the "Transferred Equity Interests") and (B) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Transferred Entity;

(vi) all Owned Real Property and Leased Real Property (collectively, the "Transferred Real Property");

(vii) all machinery, equipment (including test equipment and material handling equipment), hardware, spare parts, tools, dies, jigs, molds, patterns, gauges, fixtures (including production fixtures), business machines, computer hardware, other information technology assets, furniture, supplies, vehicles, spare parts in respect of any of the foregoing and other tangible personal property (including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit) that does not constitute Inventory (collectively, "Personal Property"), including the Personal Property located at the Excluded Real Property and identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule;

(viii) all inventories of vehicles, raw materials, work-in-process, finished goods, supplies, stock, parts, packaging materials and other accessories related thereto (collectively, "Inventory"), wherever located, including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit or that is classified as returned goods;

(ix) (A) all Intellectual Property, whether owned, licensed or otherwise held, and whether or not registrable (including any Trademarks and other Intellectual Property associated with the Discontinued Brands), and (B) all rights

and benefits associated with the foregoing, including all rights to sue or recover for past, present and future infringement, misappropriation, dilution, unauthorized use or other impairment or violation of any of the foregoing, and all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing;

(x) subject to **Section 2.4**, all Contracts, other than the Excluded Contracts (collectively, the "Purchased Contracts"), including, for the avoidance of doubt, (A) the UAW Collective Bargaining Agreement and (B) any Executory Contract designated as an Assumable Executory Contract as of the applicable Assumption Effective Date;

(xi) subject to **Section 2.4**, all approvals, Contracts, authorizations, permits, licenses, easements, Orders, certificates, registrations, franchises, qualifications, rulings, waivers, variances or other forms of permission, consent, exemption or authority issued, granted, given or otherwise made available by or under the authority of any Governmental Authority, including all pending applications therefor and all renewals and extensions thereof (collectively, "Permits"), other than to the extent that any of the foregoing relate exclusively to the Excluded Assets or Retained Liabilities;

(xii) all credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(xiii) all Claims (including Tax refunds) relating to the Purchased Assets or Assumed Liabilities, including the Claims identified on Section 2.2(a)(xiii) of the Sellers' Disclosure Schedule and all Claims against any Taxing Authority for any period, other than Bankruptcy Avoidance Actions and any of the foregoing to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xiv) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium), including Tax books and records and Tax Returns used or held for use in connection with the ownership or operation of the Purchased Assets or Assumed Liabilities, including the Purchased Contracts, customer lists, customer information and account records, computer files, data processing records, employment and personnel records, advertising and marketing data and records, credit records, records relating to suppliers, legal records and information and other data;

(xv) all goodwill and other intangible personal property arising in connection with the ownership, license, use or operation of the Purchased Assets or Assumed Liabilities;

(xvi) to the extent provided in **Section 6.17(e)**, all Assumed Plans;

(xvii) all insurance policies and the rights to the proceeds thereof, other than the Excluded Insurance Policies;

(xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period; and

(xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability.

(b) Notwithstanding anything to the contrary contained in this Agreement, Sellers shall retain all of their respective right, title and interest in and to, and shall not, and shall not be deemed to, sell, transfer, assign, convey or deliver to Purchaser, and the Purchased Assets shall not, and shall not be deemed to, include the following (collectively, the "Excluded Assets"):

(i) cash or cash equivalents in an amount equal to $950,000,000 (the "Excluded Cash");

(ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities;

(iii) all Receivables (other than Intercompany Obligations) exclusively related to any Excluded Assets or Retained Liabilities;

(iv) all of Sellers' Equity Interests in (A) S LLC, (B) S Distribution, (C) Harlem and (D) the Subsidiaries, joint ventures and the other entities in which any Seller has any Equity Interest and that are identified on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule (collectively, the "Excluded Entities");

(v) (A) all owned real property set forth on **Exhibit F** and such additional owned real property set forth on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (including, in each case, any structures, buildings or other improvements located thereon and appurtenances thereto) and (B) all real property leased or subleased that is subject to a Contract designated as an "Excluded Contract" (collectively, the "Excluded Real Property");

(vi) all Personal Property that is (A) located at the Transferred Real Property and identified on Section 2.2(b)(vi) of the Sellers' Disclosure Schedule, (B) located at the Excluded Real Property, except for those items identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule or (C) subject to a Contract

designated as an Excluded Contract (collectively, the "Excluded Personal Property");

(vii) (A) all Contracts identified on Section 2.2(b)(vii) of the Sellers' Disclosure Schedule immediately prior to the Closing, (B) all pre-petition Executory Contracts designated as Rejectable Executory Contracts, (C) all pre-petition Executory Contracts (including, for the avoidance of doubt, the Delphi Transaction Agreements and GM Assumed Contracts) that have not been designated as or deemed to be Assumable Executory Contracts in accordance with **Section 6.6** or **Section 6.31**, or that are determined, pursuant to the procedures set forth in the Sale Procedures Order, not to be assumable and assignable to Purchaser, (D) all Collective Bargaining Agreements not set forth on the Assumable Executory Contract Schedule and (E) all non-Executory Contracts for which performance by a third-party or counterparty is substantially complete and for which a Seller owes a continuing or future obligation with respect to such non-Executory Contracts (collectively, the "Excluded Contracts"), including any accounts receivable arising out of or in connection with any Excluded Contract; it being understood and agreed by the Parties hereto that, notwithstanding anything to the contrary herein, in no event shall the UAW Collective Bargaining Agreement be designated or otherwise deemed or considered an Excluded Contract;

(viii) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium) relating exclusively to the Excluded Assets or Retained Liabilities, and any books, records and other materials that any Seller is required by Law to retain;

(ix) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Seller and each Excluded Entity;

(x) all Claims against suppliers, dealers and any other third parties relating exclusively to the Excluded Assets or Retained Liabilities;

(xi) all of Sellers' Claims under this Agreement, the Ancillary Agreements and the Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 551 (inclusive), 553, 558 and any other applicable provisions of the Bankruptcy Code, and any related Claims and actions arising under such sections by operation of Law or otherwise, including any and all proceeds of the foregoing (the "Bankruptcy Avoidance Actions"), but in all cases, excluding all rights and Claims identified on Section 2.2(b)(xi) of the Sellers' Disclosure Schedule;

(xii) all credits, deferred charges, prepaid expenses, deposits and advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating exclusively to the Excluded Assets or Retained Liabilities;

(xiii) all insurance policies identified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule and the rights to proceeds thereof (collectively, the "Excluded Insurance Policies"), other than any rights to proceeds to the extent such proceeds relate to any Purchased Asset or Assumed Liability;

(xiv) all Permits, to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xv) all Retained Plans; and

(xvi) those assets identified on Section 2.2(b)(xvi) of the Sellers' Disclosure Schedule.

Section 2.3 Assumed and Retained Liabilities.

(a) The "Assumed Liabilities" shall consist only of the following Liabilities of Sellers:

(i) $7,072,488,605 of Indebtedness incurred under the DIP Facility, to be restructured pursuant to the terms of **Section 6.9** (the "Purchaser Assumed Debt");

(ii) all Liabilities under each Purchased Contract;

(iii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) any Purchased Subsidiary or (B) any joint venture or other entity in which a Seller or a Purchased Subsidiary has any Equity Interest (other than an Excluded Entity);

(iv) all Cure Amounts under each Assumable Executory Contract that becomes a Purchased Contract;

(v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Case through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes), in each case, other than (1) Liabilities of the type described in

Section 2.3(b)(iv), **Section 2.3(b)(vi)** and **Section 2.3(b)(ix)**, (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this **Section 2.3(a)**;

(vi) all Transfer Taxes payable in connection with the sale, transfer, assignment, conveyance and delivery of the Purchased Assets pursuant to the terms of this Agreement;

(vii) (A) all Liabilities arising under express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws;

(viii) all Liabilities arising under any Environmental Law (A) relating to conditions present on the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), which arise directly out of accidents, incidents or other distinct and discreet occurrences that happen on or after the Closing Date and arise from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(x) all Liabilities of Sellers arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Seller, except for Retained Workers' Compensation Claims;

(xi) all Liabilities arising out of, relating to, in respect of, or in connection with the use, ownership or sale of the Purchased Assets after the Closing;

(xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** and (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

(xiii) (A) all Employment-Related Obligations and (B) Liabilities under any Assumed Plan, in each case, relating to any Employee that is or was covered by the UAW Collective Bargaining Agreement, except for Retained Workers Compensation Claims;

(xiv) all Liabilities of Sellers underlying any construction liens that constitute Permitted Encumbrances with respect to Transferred Real Property; and

(xv) those other Liabilities identified on Section 2.3(a)(xv) of the Sellers' Disclosure Schedule.

(b) Each Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability of any Seller, whether occurring or accruing before, at or after the Closing, other than the Assumed Liabilities. In furtherance and not in limitation of the foregoing, and in all cases with the exception of the Assumed Liabilities, neither Purchaser nor any of its Affiliates shall assume, or be deemed to have assumed, any Indebtedness, Claim or other Liability of any Seller or any predecessor, Subsidiary or Affiliate of any Seller whatsoever, whether occurring or accruing before, at or after the Closing, including the following (collectively, the "Retained Liabilities"):

(i) all Liabilities arising out of, relating to, in respect of or in connection with any Indebtedness of Sellers (other than Intercompany Obligations and the Purchaser Assumed Debt), including those items identified on Section 2.3(b)(i) of the Sellers' Disclosure Schedule;

(ii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) another Seller, (B) any Excluded Subsidiary or (C) any joint venture or other entity in which a Seller or an Excluded Subsidiary has an Equity Interest (other than a Transferred Entity);

(iii) all Liabilities arising out of, relating to, in respect of or in connection with the Excluded Assets, other than Liabilities otherwise retained in this **Section 2.3(b)**;

(iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third-party Claims related to Hazardous Materials that were or are located at or that migrated or may migrate from any Transferred Real Property, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A),

(B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(v) except for Taxes assumed in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, all Liabilities with respect to any (A) Taxes arising in connection with Sellers' business, the Purchased Assets or the Assumed Liabilities and that are attributable to a Pre-Closing Tax Period (including any Taxes incurred in connection with the sale of the Purchased Assets, other than all Transfer Taxes), (B) other Taxes of any Seller and (C) Taxes of any Seller Group, including any Liability of any Seller or any Seller Group member for Taxes arising as a result of being or ceasing to be a member of any Seller Group (it being understood, for the avoidance of doubt, that no provision of this Agreement shall cause Sellers to be liable for Taxes of any Purchased Subsidiary for which Sellers would not be liable absent this Agreement);

(vi) all Liabilities for (A) costs and expenses relating to the preparation, negotiation and entry into this Agreement and the Ancillary Agreements (and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, which, for the avoidance of doubt, shall not include any Transfer Taxes), including Advisory Fees, (B) administrative fees, professional fees and all other expenses under the Bankruptcy Code and (C) all other fees and expenses associated with the administration of the Bankruptcy Cases;

(vii) all Employment-Related Obligations not otherwise assumed in **Section 2.3(a)** and **Section 6.17**, including those arising out of, relating to, in respect of or in connection with the employment, potential employment or termination of employment of any individual (other than any Employee that is or was covered by the UAW Collective Bargaining Agreement) (A) prior to or at the Closing (including any severance policy, plan or program that exists or arises, or may be deemed to exist or arise, as a result of, or in connection with, the transactions contemplated by this Agreement) or (B) who is not a Transferred Employee arising after the Closing and with respect to both clauses (A) and (B) above, including any Liability arising out of, relating to, in respect of or in connection with any Collective Bargaining Agreement (other than the UAW Collective Bargaining Agreement);

(viii) all Liabilities arising out of, relating to, in respect of or in connection with Claims for infringement or misappropriation of third party intellectual property rights;

(ix) all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date;

(x) all Liabilities to third parties for death, personal injury, other injury to Persons or damage to property, in each case, arising out of asbestos exposure;

(xi) all Liabilities to third parties for Claims based upon Contract, tort or any other basis;

(xii) all workers' compensation Claims with respect to Employees residing in or employed in, as the case may be as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(xiii) all Liabilities arising out of, relating to, in respect of or in connection with any Retained Plan;

(xiv) all Liabilities arising out of, relating to, in respect of or in connection with any Assumed Plan or Purchased Subsidiaries Employee Benefit Plan, but only to the extent such Liabilities result from the failure of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan to comply in all respects with TARP or such Liability related to any changes to or from the administration of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan prior to the Closing Date;

(xv) the Settlement Agreement, except as provided with respect to Liabilities under Section 5A of the UAW Retiree Settlement Agreement; and

(xvi) all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers.

Section 2.4 Non-Assignability.

(a) If any Contract, Transferred Equity Interest (or any interest therein), Permit or other asset, which by the terms of this Agreement, is intended to be included in the Purchased Assets is determined not capable of being assigned or transferred (whether pursuant to Sections 363 or 365 of the Bankruptcy Code) to Purchaser at the Closing without the consent of another party thereto, the issuer thereof or any third party (including a Governmental Authority) ("Non-Assignable Assets"), this Agreement shall not constitute an assignment thereof, or an attempted assignment thereof, unless and until any such consent is obtained. Subject to **Section 6.3**, Sellers shall use reasonable best efforts, and Purchaser shall use reasonable best efforts to cooperate with Sellers, to obtain the consents necessary to assign to Purchaser the Non-Assignable Assets before, at or after the Closing; provided, however, that neither Sellers nor Purchaser shall be required to make any expenditure, incur any Liability, agree to any modification to any Contract or forego or alter any rights in connection with such efforts.

(b) To the extent that the consents referred to in **Section 2.4(a)** are not obtained by Sellers, except as otherwise provided in the Ancillary Documents to which one or more Sellers is a party, Sellers' sole responsibility with respect to such Non-Assignable Assets shall be to use reasonable best efforts, at no cost to Sellers, to (i) provide to Purchaser the benefits of any Non-Assignable Assets; (ii) cooperate in any

reasonable and lawful arrangement designed to provide the benefits of any Non-Assignable Assets to Purchaser without incurring any financial obligation to Purchaser; and (iii) enforce for the account of Purchaser and at the cost of Purchaser any rights of Sellers arising from any Non-Assignable Asset against such party or parties thereto; provided, however, that any such efforts described in clauses (i) through (iii) above shall be made only with the consent, and at the direction, of Purchaser. Without limiting the generality of the foregoing, with respect to any Non-Assignable Asset that is a Contract of Leased Real Property for which a consent is not obtained on or prior to the Closing Date, Purchaser shall enter into a sublease containing the same terms and conditions as such lease (unless such lease by its terms prohibits such subleasing arrangement), and entry into and compliance with such sublease shall satisfy the obligations of the Parties under this **Section 2.4(b)** until such consent is obtained.

(c) If Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b)**, Purchaser shall perform, on behalf of the applicable Seller, for the benefit of the issuer thereof or the other party or parties thereto, the obligations (including payment obligations) of the applicable Seller thereunder or in connection therewith arising from and after the Closing Date and if Purchaser fails to perform to the extent required herein, Sellers, without waiving any rights or remedies that they may have under this Agreement or applicable Laws, may (i) suspend their performance under **Section 2.4(b)** in respect of the Non-Assignable Asset that is the subject of such failure to perform unless and until such situation is remedied, or (ii) perform at Purchaser's sole cost and expense, in which case, Purchaser shall reimburse Sellers' costs and expenses of such performance immediately upon receipt of an invoice therefor. To the extent that Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b),** Purchaser shall indemnify, defend and hold Sellers harmless from and against any and all Liabilities relating to such Non-Assignable Asset and arising from and after the Closing Date (other than such Damages that have resulted from the gross negligence or willful misconduct of Sellers).

(d) For the avoidance of doubt, the inability of any Contract, Transferred Equity Interest (or any other interest therein), Permit or other asset, which by the terms of this Agreement is intended to be included in the Purchased Assets to be assigned or transferred to Purchaser at the Closing shall not (i) give rise to a basis for termination of this Agreement pursuant to **ARTICLE VIII** or (ii) give rise to any right to any adjustment to the Purchase Price.

ARTICLE III
CLOSING; PURCHASE PRICE

Section 3.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on the date that falls at least three (3) Business Days following the satisfaction and/or waiver of all conditions to the Closing set forth in **ARTICLE VII** (other than any of such conditions that by its nature is to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or on such other date as the Parties mutually agree, at the offices of Jenner & Block LLP, 919 Third Avenue, New York City, New York 10022-3908, or at such other place or such other date as the Parties may agree in

writing. The date on which the Closing actually occurs shall be referred to as the "Closing Date," and except as otherwise expressly provided herein, the Closing shall for all purposes be deemed effective as of 9:00 a.m., New York City time, on the Closing Date.

Section 3.2 Purchase Price.

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less $8,022,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than $1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

(b) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (i) offset, pursuant to Section 363(k) of the Bankruptcy Code, the UST Credit Bid Amount against Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility; (ii) transfer to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the UST Warrant; and (iii) issue to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the Parent Shares and the Parent Warrants.

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will, within five (5) days of entry of the Claims Estimate Order, issue 10,000,000 additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price.

(ii) The number of Adjustment Shares shall be adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization,

merger, consolidation, reorganization or similar transaction with respect to the Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares.

(iii) At the Closing, Purchaser shall have authorized and, thereafter, shall reserve for issuance the Adjustment Shares that may be issued hereunder.

Section 3.3 Allocation. Following the Closing, Purchaser shall prepare and deliver to Sellers an allocation of the aggregate consideration among Sellers and, for any transactions contemplated by this Agreement that do not constitute an Agreed G Transaction pursuant to **Section 6.16**, Purchaser shall also prepare and deliver to the applicable Seller a proposed allocation of the Purchase Price and other consideration paid in exchange for the Purchased Assets, prepared in accordance with Section 1060, and if applicable, Section 338, of the Tax Code (the "Allocation"). The applicable Seller shall have thirty (30) days after the delivery of the Allocation to review and consent to the Allocation in writing, which consent shall not be unreasonably withheld, conditioned or delayed. If the applicable Seller consents to the Allocation, such Seller and Purchaser shall use such Allocation to prepare and file in a timely manner all appropriate Tax filings, including the preparation and filing of all applicable forms in accordance with applicable Law, including Forms 8594 and 8023, if applicable, with their respective Tax Returns for the taxable year that includes the Closing Date and shall take no position in any Tax Return that is inconsistent with such Allocation; provided, however, that nothing contained herein shall prevent the applicable Seller and Purchaser from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation, and neither the applicable Seller nor Purchaser shall be required to litigate before any court, any proposed deficiency or adjustment by any Taxing Authority challenging such Allocation. If the applicable Seller does not consent to such Allocation, the applicable Seller shall notify Purchaser in writing of such disagreement within such thirty (30) day period, and thereafter, the applicable Seller shall attempt in good faith to promptly resolve any such disagreement. If the Parties cannot resolve a disagreement under this **Section 3.3**, such disagreement shall be resolved by an independent accounting firm chosen by Purchaser and reasonably acceptable to the applicable Seller, and such resolution shall be final and binding on the Parties. The fees and expenses of such accounting firm shall be borne equally by Purchaser, on the one hand, and the applicable Seller, on the other hand. The applicable Seller shall provide Purchaser, and Purchaser shall provide the applicable Seller, with a copy of any information described above required to be furnished to any Taxing Authority in connection with the transactions contemplated herein.

Section 3.4 Prorations.

(a) The following prorations relating to the Purchased Assets shall be made:

(i) Except as provided in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, in the case of Taxes with respect to a Straddle Period, for purposes of Retained Liabilities, the portion of any such Tax that is allocable to Sellers with respect to any Purchased Asset shall be:

(A) in the case of Taxes that are either (1) based upon or related to income or receipts, or (2) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), other than Transfer Taxes, equal to the amount that would be payable if the taxable period ended on the Closing Date; and

(B) in the case of Taxes imposed on a periodic basis, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire Straddle Period (after giving effect to amounts which may be deducted from or offset against such Taxes) (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction, the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period.

In the case of any Tax based upon or measured by capital (including net worth or long-term debt) or intangibles, any amount thereof required to be allocated under this clause (i) shall be computed by reference to the level of such items on the Closing Date. All determinations necessary to effect the foregoing allocations shall be made in a manner consistent with prior practice of the applicable Seller, Seller Group member, or Seller Subsidiary.

(ii) All charges for water, wastewater treatment, sewers, electricity, fuel, gas, telephone, garbage and other utilities relating to the Transferred Real Property shall be prorated as of the Closing Date, with Sellers being liable to the extent such items relate to the Pre-Closing Tax Period, and Purchaser being liable to the extent such items relate to the Post-Closing Tax Period.

(b) If any of the foregoing proration amounts cannot be determined as of the Closing Date due to final invoices not being issued as of the Closing Date, Purchasers and Sellers shall prorate such items as and when the actual invoices are issued to the appropriate Party. The Party owing amounts to the other by means of such prorations shall pay the same within thirty (30) days after delivery of a written request by the paying Party.

Section 3.5 Post-Closing True-up of Certain Accounts.

(a) Sellers shall promptly reimburse Purchaser in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including wire and similar transfers of funds, written or initiated by Sellers prior to the Closing in respect of any obligations that would have constituted Retained Liabilities at the Closing, and that clear or settle in accounts maintained by Purchaser (or its Affiliates) at or following the Closing.

(b) Purchaser shall promptly reimburse Sellers in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including

wire and similar transfers of funds, written or initiated by Sellers following the Closing in respect of any obligations that would have constituted Assumed Liabilities at the Closing, and that clear or settle in accounts maintained by Sellers (or their Affiliates) at or following the Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as disclosed in the Parent SEC Documents or in the Sellers' Disclosure Schedule, each Seller represents and warrants severally, and not jointly, to Purchaser as follows:

Section 4.1 Organization and Good Standing. Each Seller and each Purchased Subsidiary is duly organized and validly existing under the Laws of its jurisdiction of organization. Subject to the limitations imposed on Sellers as a result of having filed the Bankruptcy Cases, each Seller and each Purchased Subsidiary has all requisite corporate, limited liability company, partnership or similar power, as the case may be, and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each Seller and each Purchased Subsidiary is duly qualified or licensed or admitted to do business, and is in good standing in (where such concept is recognized under applicable Law), the jurisdictions in which the ownership of its property or the conduct of its business requires such qualification or license, in each case, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Material Adverse Effect. Sellers have made available to Purchaser prior to the execution of this Agreement true and complete copies of Sellers' Organizational Documents, in each case, as in effect on the date of this Agreement.

Section 4.2 Authorization; Enforceability. Subject to the entry and effectiveness of the Sale Approval Order, each Seller has the requisite corporate or limited liability company power and authority, as the case may be, to (a) execute and deliver this Agreement and the Ancillary Agreements to which such Seller is a party; (b) perform its obligations hereunder and thereunder; and (c) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which such Seller is a party. Subject to the entry and effectiveness of the Sale Approval Order, this Agreement constitutes, and each Ancillary Agreement, when duly executed and delivered by each Seller that is a party thereto, shall constitute, a valid and legally binding obligation of such Seller (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of Purchaser), enforceable against such Seller in accordance with its respective terms and conditions, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.3 Noncontravention; Consents.

(a) Subject, in the case of clauses (i), (iii) and (iv), to the entry and effectiveness of the Sale Approval Order, the execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by such Seller of the

transactions contemplated hereby and thereby, do not (i) violate any Law to which the Purchased Assets are subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of such Seller; (iii) result in a material breach or constitute a material default under, or create in any Person the right to terminate, cancel or accelerate any material obligation of such Seller pursuant to any material Purchased Contract (including any material License); or (iv) result in the creation or imposition of any Encumbrance, other than a Permitted Encumbrance, upon the Purchased Assets, except for any of the foregoing in the case of clauses (i), (iii) and (iv), that would not reasonably be expected to have a Material Adverse Effect.

(b) Subject to the entry and effectiveness of the Sale Approval Order, no consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority (other than the Bankruptcy Court) is required by any Seller for the consummation by each Seller of the transactions contemplated by this Agreement or by the Ancillary Agreements to which such Seller is a party or the compliance by such Seller with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority, the failure of which to be received or made would not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Subsidiaries. Section 4.4 of the Sellers' Disclosure Schedule identifies each Purchased Subsidiary and the jurisdiction of organization thereof. There are no Equity Interests in any Purchased Subsidiary issued, reserved for issuance or outstanding. All of the outstanding shares of capital stock, if applicable, of each Purchased Subsidiary have been duly authorized, validly issued, are fully paid and nonassessable and are owned, directly or indirectly, by Sellers, free and clear of all Encumbrances other than Permitted Encumbrances. Sellers, directly or indirectly, have good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries and, upon delivery by Sellers to Purchaser of the outstanding Equity Interests of the Purchased Subsidiaries (either directly or indirectly) at the Closing, good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries will pass to Purchaser (or, with respect to any Purchased Subsidiary that is not a direct Subsidiary of a Seller, the Purchased Subsidiary with regard to which it is a Subsidiary will continue to have good and valid title to such outstanding Equity Interests). None of the outstanding Equity Interests in the Purchased Subsidiaries has been conveyed in violation of, and none of the outstanding Equity Interests in the Purchased Subsidiaries has been issued in violation of (a) any preemptive or subscription rights, rights of first offer or first refusal or similar rights or (b) any voting trust, proxy or other Contract (including options or rights of first offer or first refusal) with respect to the voting, purchase, sale or other disposition thereof.

Section 4.5 Reports and Financial Statements; Internal Controls.

(a) (i) Parent has filed or furnished, or will file or furnish, as applicable, all forms, documents, schedules and reports, together with any amendments required to be made with respect thereto, required to be filed or furnished with the SEC from April 1, 2007 until the Closing (the "Parent SEC Documents"), and (ii) as of their respective

filing dates, or, if amended, as of the date of the last such amendment, the Parent SEC Documents complied or will comply in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the Parent SEC Documents contained or will contain any untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(b) (i) The consolidated financial statements of Parent included in the Parent SEC Documents (including all related notes and schedules, where applicable) fairly present or will fairly present in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries, as at the respective dates thereof, and (ii) the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(c) Parent maintains a system of internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for inclusion in the Parent SEC Documents in accordance with GAAP and maintains records that (i) in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent and its consolidated Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are made only in accordance with appropriate authorizations and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets. There are no (A) material weaknesses in the design or operation of the internal controls of Parent or (B) to the Knowledge of Sellers, any fraud, whether or not material, that involves management or other employees of Parent or any Purchased Subsidiary who have a significant role in internal control.

Section 4.6 Absence of Certain Changes and Events. From January 1, 2009 through the date hereof, except as otherwise contemplated, required or permitted by this Agreement, there has not been:

(a) (i) any declaration, setting aside or payment of any dividend or other distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value) with

respect to any Equity Interests in any Seller or any Key Subsidiary or any repurchase for value of any Equity Interests or rights of any Seller or any Key Subsidiary (except for dividends and distributions among its Subsidiaries) or (ii) any split, combination or reclassification of any Equity Interests in Sellers or any issuance or the authorization of any issuance of any other Equity Interests in respect of, in lieu of or in substitution for Equity Interests of Sellers;

(b) other than as is required by the terms of the Parent Employee Benefit Plans and Policies, the Settlement Agreement, the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement or as may be required by applicable Law, in each case, as may be permitted by TARP or under any enhanced restrictions on executive compensation agreed to by Parent and Sponsor, any (i) grant to any Seller Key Personnel of any increase in compensation, except increases required under employment Contracts in effect as of January 1, 2009, or as a result of a promotion to a position of additional responsibility, (ii) grant to any Seller Key Personnel of any increase in retention, change in control, severance or termination compensation or benefits, except as required under any employment Contracts in effect as of January 1, 2009, (iii) other than in the Ordinary Course of Business, adoption, termination of, entry into or amendment or modification of, in a material manner, any Benefit Plan, (iv) adoption, termination of, entry into or amendment or modification of, in a material manner, any employment, retention, change in control, severance or termination Contract with any Seller Key Personnel or (v) entry into or amendment, modification or termination of any Collective Bargaining Agreement or other Contract with any Union of any Seller or Purchased Subsidiary;

(c) any material change in accounting methods, principles or practices by any Seller, Purchased Subsidiary or Seller Group member or any material joint venture to which any Seller or Purchased Subsidiary is a party, in each case, materially affecting the consolidated assets or Liabilities of Parent, except to the extent required by a change in GAAP or applicable Law, including Tax Laws;

(d) any sale, transfer, pledge or other disposition by any Seller or any Purchased Subsidiary of any portion of its assets or properties not in the Ordinary Course of Business and with a sale price or fair value in excess of $100,000,000;

(e) aggregate capital expenditures by any Seller or any Purchased Subsidiary in excess of $100,000,000 in a single project or group of related projects or capital expenditures in excess of $100,000,000 in the aggregate;

(f) any acquisition by any Seller or any Purchased Subsidiary (including by merger, consolidation, combination or acquisition of any Equity Interests or assets) of any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeded $100,000,000;

(g) any discharge or satisfaction of any Indebtedness by any Seller or any Purchased Subsidiary in excess of $100,000,000, other than the discharge or satisfaction of any Indebtedness when due in accordance with its terms;

(h) any alteration, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Seller or any Key Subsidiary or any material joint venture to which any Seller or any Key Subsidiary is a party, or the adoption or alteration of a plan with respect to any of the foregoing;

(i) any amendment or modification to the material adverse detriment of any Key Subsidiary of any material Affiliate Contract or Seller Material Contract, or termination of any material Affiliate Contract or Seller Material Contract to the material adverse detriment of any Seller or any Key Subsidiary, in each case, other than in the Ordinary Course of Business;

(j) any event, development or circumstance involving, or any change in the financial condition, properties, assets, liabilities, business, or results of operations of Sellers or any circumstance, occurrence or development (including any adverse change with respect to any circumstance, occurrence or development existing on or prior to the end of the most recent fiscal year end) of Sellers that has had or would reasonably be expected to have a Material Adverse Effect; or

(k) any commitment by any Seller, any Key Subsidiary (in the case of clauses (a), (g) and (h) above) or any Purchased Subsidiary (in the case of clauses (b) through (f) and clauses (h) and (j) above) to do any of the foregoing.

Section 4.7 Title to and Sufficiency of Assets.

(a) Subject to the entry and effectiveness of the Sale Approval Order, at the Closing, Sellers will obtain good and marketable title to, or a valid and enforceable right by Contract to use, the Purchased Assets, which shall be transferred to Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The tangible Purchased Assets of each Seller are in normal operating condition and repair, subject to ordinary wear and tear, and sufficient for the operation of such Seller's business as currently conducted, except where such instances of noncompliance with the foregoing would not reasonably be expected to have a Material Adverse Effect.

Section 4.8 Compliance with Laws; Permits.

(a) Each Seller and each Purchased Subsidiary is in compliance with and is not in default under or in violation of any applicable Law, except where such non-compliance, default or violation would not reasonably be expected to have a Material Adverse Effect. Notwithstanding anything contained in this **Section 4.8(a)**, no representation or warranty shall be deemed to be made in this **Section 4.8(a)** in respect of

the matters referenced in **Section 4.5**, **Section 4.9**, **Section 4.10**, **Section 4.11** or **Section 4.13**, each of which matters is addressed by such other Sections of this Agreement.

(b) (i) Each Seller has all Permits necessary for such Seller to own, lease and operate the Purchased Assets and (ii) each Purchased Subsidiary has all Permits necessary for such entity to own, lease and operate its properties and assets, except in each case, where the failure to possess such Permits would not reasonably be expected to have a Material Adverse Effect. All such Permits are in full force and effect, except where the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect.

Section 4.9 Environmental Laws. Except as would not reasonably be expected to have a Material Adverse Effect, to the Knowledge of Sellers, (a) each Seller and each Purchased Subsidiary has conducted its business on the Transferred Real Property in compliance with all applicable Environmental Laws; (b) none of the Transferred Real Property currently contains any Hazardous Materials, which could reasonably be expected to give rise to an undisclosed Liability under applicable Environmental Laws; (c) as of the date of this Agreement, no Seller or Purchased Subsidiary has received any currently unresolved written notices, demand letters or written requests for information from any Governmental Authority indicating that such entity may be in violation of any Environmental Law in connection with the ownership or operation of the Transferred Real Property; and (d) since April 1, 2007, no Hazardous Materials have been transported in violation of any applicable Environmental Law, or in a manner reasonably foreseen to give rise to any Liability under any Environmental Law, from any Transferred Real Property as a result of any activity of any Seller or Purchased Subsidiary. Except as provided in **Section 4.8(b)** with respect to Permits under Environmental Laws, Purchaser agrees and understands that no representation or warranty is made in respect of environmental matters in any Section of this Agreement other than this **Section 4.9**.

Section 4.10 Employee Benefit Plans.

(a) Section 4.10 of the Sellers' Disclosure Schedule sets forth all material Parent Employee Benefit Plans and Policies and Purchased Subsidiaries Employee Benefit Plans (collectively, the "Benefit Plans"). Sellers have made available, upon reasonable request, to Purchaser true, complete and correct copies of (i) each material Benefit Plan, (ii) the three (3) most recent annual reports on Form 5500 (including all schedules, auditor's reports and attachments thereto) filed with the IRS with respect to each such Benefit Plan (if any such report was required by applicable Law), (iii) the most recent actuarial or other financial report prepared with respect to such Benefit Plan, if any, (iv) each trust agreement and insurance or annuity Contract or other funding or financing arrangement relating to such Benefit Plan and (v) to the extent not subject to confidentiality restrictions, any material written communications received by Sellers or any Subsidiaries of Sellers from any Governmental Authority relating to a Benefit Plan, including any communication from the Pension Benefit Guaranty Corporation (the "PBGC"), in respect of any Benefit Plan, subject to Title IV of ERISA.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Benefit Plan has been administered in accordance with its terms, (ii) each

of Sellers, any of their Subsidiaries and each Benefit Plan is in compliance with the applicable provisions of ERISA, the Tax Code, all other applicable Laws (including Section 409A of the Tax Code, TARP or under any enhanced restrictions on executive compensation agreed to by Sellers with Sponsor) and the terms of all applicable Collective Bargaining Agreements, (iii) there are no (A) investigations by any Governmental Authority, (B) termination proceedings or other Claims (except routine Claims for benefits payable under any Benefit Plans) or (C) Claims, in each case, against or involving any Benefit Plan or asserting any rights to or Claims for benefits under any Benefit Plan that could give rise to any Liability, and there are not any facts or circumstances that could give rise to any Liability in the event of any such Claim and (iv) each Benefit Plan that is intended to be a Tax-qualified plan under Section 401(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is qualified and any trust established in connection with any Benefit Plan that is intended to be exempt from taxation under Section 501(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is exempt from United States federal income Taxes under Section 501(a) of the Tax Code (or similar provisions under non-United States law). To the Knowledge of Sellers, no circumstance and no fact or event exists that would be reasonably expected to adversely affect the qualified status of any Benefit Plan.

(c) None of the Parent Employee Benefit Plans and Policies or any material Purchased Subsidiaries Employee Benefit Plans that is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) has failed to satisfy, as applicable, the minimum funding standards (as described in Section 302 of ERISA or Section 412 of the Tax Code), whether or not waived, nor has any waiver of the minimum funding standards of Section 302 of ERISA or Section 412 of the Tax Code been requested.

(d) No Seller or any ERISA Affiliate of any Seller (including any Purchased Subsidiary) (i) has any actual or contingent Liability (A) under any employee benefit plan subject to Title IV of ERISA other than the Benefit Plans (except for contributions not yet due), (B) to the PBGC (except for the payment of premiums not yet due), which Liability, in each case, has not been fully paid as of the date hereof, or, if applicable, which has not been accrued in accordance with GAAP or (C) under any "multiemployer plan" (as defined in Section 3(37) of ERISA), or (ii) will incur withdrawal Liability under Title IV of ERISA as a result of the consummation of the transactions contemplated hereby, except for Liabilities with respect to any of the foregoing that would not reasonably be expected to have a Material Adverse Effect.

(e) Neither the execution of this Agreement or any Ancillary Agreement nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event, including termination of employment) will entitle any member of the board of directors of Parent or any Applicable Employee who is an officer or member of senior management of Parent to any increase in compensation or benefits, any grant of severance, retention, change in control or other similar compensation or benefits, any acceleration of the time of payment or vesting of any compensation or benefits (but not including, for this purpose, any retention, stay bonus or other incentive plan, program, arrangement that is a Retained Plan) or will require the securing or funding of any

compensation or benefits or limit the right of Sellers, any Subsidiary of Sellers or Purchaser or any Affiliates of Purchaser to amend, modify or terminate any Benefit Plan. Any new grant of severance, retention, change in control or other similar compensation or benefits to any Applicable Employee, and any payout to any Transferred Employee under any such existing arrangements, that would otherwise occur as a result of the execution of this Agreement or any Ancillary Agreement (alone or in conjunction with any other event, including termination of employment), has been waived by such Applicable Employee or otherwise cancelled.

(f) No amount or other entitlement currently in effect that could be received (whether in cash or property or the vesting of property) as a result of the actions contemplated by this Agreement and the Ancillary Agreements (alone or in combination with any other event) by any Person who is a "disqualified individual" (as defined in Treasury Regulation Section 1.280G-1) (each, a "Disqualified Individual") with respect to Sellers would be an "excess parachute payment" (as defined in Section 280G(b)(1) of the Tax Code). No Disqualified Individual or Applicable Employee is entitled to receive any additional payment (e.g., any Tax gross-up or any other payment) from Sellers or any Subsidiaries of Sellers in the event that the additional or excise Tax required by Section 409A or 4999 of the Tax Code, respectively is imposed on such individual.

(g) All individuals covered by the UAW Collective Bargaining Agreement are either Applicable Employees or employed by a Purchased Subsidiary.

(h) Section 4.10(h) of the Sellers' Disclosure Schedule lists all non-standard individual agreements currently in effect providing for compensation, benefits and perquisites for any current and former officer, director or top twenty-five (25) most highly paid employee of Parent and any other such material non-standard individual agreements with non-top twenty-five (25) employees.

Section 4.11 Labor Matters. There is not any labor strike, work stoppage or lockout pending, or, to the Knowledge of Sellers, threatened in writing against or affecting any Seller or any Purchased Subsidiary. Except as would not reasonably be expected to have a Material Adverse Effect: (a) none of Sellers or any Purchased Subsidiary is engaged in any material unfair labor practice; (b) there are not any unfair labor practice charges or complaints against Sellers or any Purchased Subsidiary pending, or, to the Knowledge of Sellers, threatened, before the National Labor Relations Board; (c) there are not any pending or, to the Knowledge of Sellers, threatened in writing, union grievances against Sellers or any Purchased Subsidiary as to which there is a reasonable possibility of adverse determination; (d) there are not any pending, or, to the Knowledge of Sellers, threatened in writing, charges against Sellers or any Purchased Subsidiary or any of their current or former employees before the Equal Employment Opportunity Commission or any state or local agency responsible for the prevention of unlawful employment practices; (e) no union organizational campaign is in progress with respect to the employees of any Seller or any Purchased Subsidiary and no question concerning representation of such employees exists; and (f) no Seller nor any Purchased Subsidiary has received written communication during the past five (5) years of the intent of any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation of or

affecting Sellers or any Subsidiary of Sellers and, to the Knowledge of Sellers, no such investigation is in progress.

Section 4.12 Investigations; Litigation. (a) To the Knowledge of Sellers, there is no investigation or review pending by any Governmental Authority with respect to any Seller that would reasonably be expected to have a Material Adverse Effect, and (b) there are no actions, suits, inquiries or proceedings, or to the Knowledge of Sellers, investigations, pending against any Seller, or relating to any of the Transferred Real Property, at law or in equity before, and there are no Orders of or before, any Governmental Authority, in each case that would reasonably be expected to have a Material Adverse Effect.

Section 4.13 Tax Matters. Except as would not reasonably be expected to have a Material Adverse Effect, (a) all Tax Returns required to have been filed by, with respect to or on behalf of any Seller, Seller Group member or Purchased Subsidiary have been timely filed (taking into account any extension of time to file granted or obtained) and are correct and complete in all respects, (b) all amounts of Tax required to be paid with respect to any Seller, Seller Group member or Purchased Subsidiary (whether or not shown on any Tax Return) have been timely paid or are being contested in good faith by appropriate proceedings and have been reserved for in accordance with GAAP in Parent's consolidated audited financial statements, (c) no deficiency for any amount of Tax has been asserted or assessed by a Taxing Authority in writing relating to any Seller, Seller Group member or Purchased Subsidiary that has not been satisfied by payment, settled or withdrawn, (d) there are no audits, Claims or controversies currently asserted or threatened in writing with respect to any Seller, Seller Group member or Purchased Subsidiary in respect of any amount of Tax or failure to file any Tax Return, (e) no Seller, Seller Group member or Purchased Subsidiary has agreed to any extension or waiver of the statute of limitations applicable to any Tax Return, or agreed to any extension of time with respect to a Tax assessment or deficiency, which period (after giving effect to such extension or waiver) has not yet expired, (f) no Seller, Seller Group member or Purchased Subsidiary is a party to or the subject of any ruling requests, private letter rulings, closing agreements, settlement agreements or similar agreements with any Taxing Authority for any periods for which the statute of limitations has not yet run, (g) no Seller, Seller Group member or Purchased Subsidiary (A) has any Liability for Taxes of any Person (other than any Purchased Subsidiary), including as a transferee or successor, or pursuant to any contractual obligation (other than pursuant to any commercial Contract not primarily related to Tax), or (B) is a party to or bound by any Tax sharing agreement, Tax allocation agreement or Tax indemnity agreement (in every case, other than this Agreement and those Tax sharing, Tax allocation or Tax indemnity agreements that will be terminated prior to Closing and with respect to which no post-Closing Liabilities will exist), (h) each of the Purchased Subsidiaries and each Seller and Seller Group member has withheld or collected all Taxes required to have been withheld or collected and, to the extent required, has paid such Taxes to the proper Taxing Authority, (i) no Seller, Seller Group member or Purchased Subsidiary will be required to make any adjustments in taxable income for any Tax period (or portion thereof) ending after the Closing Date, including pursuant to Section 481(a) or 263A of the Tax Code or any similar provision of foreign, provincial, state, local or other Law as a result of transactions or events occurring, or accounting methods employed, prior to the Closing, nor is any application pending with any Taxing Authority requesting permission for any changes in accounting methods that relate to any Seller, Seller Group member or Purchased Subsidiary, (j) the Assumed Liabilities were incurred through the

Ordinary Course of Business, (k) there are no Tax Encumbrances on any of the Purchased Assets or the assets of any Purchased Subsidiary (other than Permitted Encumbrances for which appropriate reserves have been established (and to the extent that such liens relate to a period ending on or before December 31, 2008, the amount of any such Liability is accrued or reserved for as a Liability in accordance with GAAP in the audited consolidated balance sheet of Sellers at December 31, 2008)), (l) none of the Purchased Subsidiaries or Sellers has been a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify under Section 355(a) of the Tax Code, (m) none of the Purchased Subsidiaries, Sellers or Seller Group members has participated in any "listed transactions" or "reportable transactions" within the meaning of Treasury Regulations Section 1.6011-4, (n) there are no unpaid Taxes with respect to any Seller, Seller Group member or Purchased Asset for which Purchaser will have liability as a transferee or successor and (o) the most recent financial statements contained in the Parent SEC Documents reflect an adequate reserve for all Taxes payable by Sellers, the Purchased Subsidiaries and the members of all Seller Groups for all taxable periods and portions thereof through the date of such financial statements.

Section 4.14 Intellectual Property and IT Systems.

(a) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and each Purchased Subsidiary owns, controls, or otherwise possesses sufficient rights to use, free and clear of all Encumbrances (other than Permitted Encumbrances) all Intellectual Property necessary for the conduct of its business in substantially the same manner as conducted as of the date hereof; and (ii) all Intellectual Property owned by Sellers that is necessary for the conduct of the business of Sellers and each Purchased Subsidiary as conducted as of the date hereof is subsisting and in full force and effect, has not been adjudged invalid or unenforceable, has not been abandoned or allowed to lapse, in whole or in part, and to the Knowledge of Sellers, is valid and enforceable.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, all necessary registration, maintenance and renewal fees in connection with the Intellectual Property owned by Sellers have been paid and all necessary documents and certificates in connection with such Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or applicable foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining or renewing such Intellectual Property.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, no Intellectual Property owned by Sellers is the subject of any licensing or franchising Contract that prohibits or materially restricts the conduct of business as presently conducted by any Seller or Purchased Subsidiary or the transfer of such Intellectual Property.

(d) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the Intellectual Property or the conduct of Sellers' and the Purchased Subsidiaries' businesses does not infringe, misappropriate, dilute, or otherwise violate or conflict with the trademarks, patents, copyrights, inventions, trade secrets, proprietary

information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any Person; (ii) to the Knowledge of Sellers, no other Person is now infringing or in conflict with any Intellectual Property owned by Sellers or Sellers' rights thereunder; and (iii) no Seller or any Purchased Subsidiary has received any written notice that it is violating or has violated the trademarks, patents, copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any third party.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, no holding, decision or judgment has been rendered by any Governmental Authority against any Seller, which would limit, cancel or invalidate any Intellectual Property owned by Sellers.

(f) No action or proceeding is pending, or to the Knowledge of Sellers, threatened, on the date hereof that (i) seeks to limit, cancel or invalidate any Intellectual Property owned by Sellers or such Sellers' ownership interest therein; and (ii) if adversely determined, would reasonably be expected to have a Material Adverse Effect.

(g) Except as would not reasonably be expected to have a Material Adverse Effect, Sellers and the Purchased Subsidiaries have taken reasonable actions to (i) maintain, enforce and police their Intellectual Property; and (ii) protect their material Software, websites and other systems (and the information therein) from unauthorized access or use.

(h) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and Purchased Subsidiary has taken reasonable steps to protect its rights in, and confidentiality of, all the Trade Secrets, and any other confidential information owned by such Seller or Purchased Subsidiary; and (ii) to the Knowledge of Sellers, such Trade Secrets have not been disclosed by Sellers to any Person except pursuant to a valid and appropriate non-disclosure, license or any other appropriate Contract that has not been breached.

(i) Except as would not reasonably be expected to have a Material Adverse Effect, there has not been any malfunction with respect to any of the Software, electronic data processing, data communication lines, telecommunication lines, firmware, hardware, Internet websites or other information technology equipment of any Seller or Purchased Subsidiary since April 1, 2007, which has not been remedied or replaced in all respects.

(j) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the consummation of the transactions contemplated by this Agreement will not cause to be provided or licensed to any third Person, or give rise to any rights of any third Person with respect to, any source code that is part of the Software owned by Sellers; and (ii) Sellers have implemented reasonable disaster recovery and back-up plans with respect to the Software.

Section 4.15 Real Property. Each Seller owns and has valid title to the Transferred Real Property that is Owned Real Property owned by it and has valid leasehold or

subleasehold interests, as the case may be, in all of the Transferred Real Property that is Leased Real Property leased or subleased by it, in each case, free and clear of all Encumbrances, other than Permitted Encumbrances. Each of Sellers and the Purchased Subsidiaries has complied with the terms of each lease, sublease, license or other Contract relating to the Transferred Real Property to which it is a party, except any failure to comply that would not reasonably be expected to have a Material Adverse Effect.

Section 4.16 Material Contracts.

(a) Except for this Agreement, the Parent Employee Benefit Plans and Policies, except as filed with, or disclosed or incorporated in, the Parent SEC Documents or except as set forth on Section 4.16 of the Sellers' Disclosure Schedule, as of the date hereof, no Seller is a party to or bound by (i) any "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC); (ii) any non-compete or exclusivity agreement that materially restricts the operation of Sellers' core business; (iii) any asset purchase agreement, stock purchase agreement or other agreement entered into within the past six years governing a material joint venture or the acquisition or disposition of assets or other property where the consideration paid or received for such assets or other property exceeded $500,000,000 (whether in cash, stock or otherwise); (iv) any agreement or series of related agreements with any supplier of Sellers who directly support the production of vehicles, which provided collectively for payments by Sellers to such supplier in excess of $250,000,000 during the 12-month period ended December 31, 2008; (v) any agreement or series of related agreements with any supplier of Sellers who does not directly support the production of vehicles, which, provided collectively for payments by Sellers to such supplier in excess of $100,000,000 during the 12-month period ended April 30, 2009; (vi) any Contract relating to the lease or purchase of aircraft; (vii) any settlement agreement where a Seller has paid or may be required to pay an amount in excess of $100,000,000 to settle the Claims covered by such settlement agreement; (viii) any material Contract that will, following the Closing, as a result of transactions contemplated hereby, be between or among a Seller or any Retained Subsidiary, on the one hand, and Purchaser or any Purchased Subsidiary, on the other hand (other than the Ancillary Agreements); and (ix) agreements entered into in connection with a material joint venture (all Contracts of the type described in this **Section 4.16(a)** being referred to herein as "Seller Material Contracts").

(b) No Seller is in breach of or default under, or has received any written notice alleging any breach of or default under, the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Seller Material Contract or material License is in breach of or default under the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Seller Material Contract or material License is a valid, binding and enforceable obligation of such Seller that is party thereto and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws

relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.17 Dealer Sales and Service Agreements for Continuing Brands. Parent is not in breach of or default under the terms of any United States dealer sales and service Contract for Continuing Brands other than any Excluded Continuing Brand Dealer Agreement (each, a "Dealer Agreement"), where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Dealer Agreement is in breach of or default under the terms of such Dealer Agreement, where such breach or default would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Dealer Agreement is a valid and binding obligation of Parent and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.18 Sellers' Products.

(a) To the Knowledge of Sellers, since April 1, 2007, neither Sellers nor any Purchased Subsidiary has conducted or decided to conduct any material recall or other field action concerning any product developed, designed, manufactured, sold, provided or placed in the stream of commerce by or on behalf of any Seller or any Purchased Subsidiary.

(b) As of the date hereof, there are no material pending actions for negligence, manufacturing negligence or improper workmanship, or material pending actions, in whole or in part, premised upon product liability, against or otherwise naming as a party any Seller, Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, or to the Knowledge of Sellers, threatened in writing or of which Seller has received written notice that involve a product liability Claim resulting from the ownership, possession or use of any product manufactured, sold or delivered by any Seller, any Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, which would reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of Sellers and except as would not reasonably be expected to have a Material Adverse Effect, no supplier to any Seller has threatened in writing to cease the supply of products or services that could impair future production at a major production facility of such Seller.

Section 4.19 Certain Business Practices. Each of Sellers and the Purchased Subsidiaries is in compliance with the legal requirements under the Foreign Corrupt Practices Act, as amended (the "FCPA"), except for such failures, whether individually or in the aggregate, to maintain books and records or internal controls as required thereunder that are not

material. To the Knowledge of Sellers, since April 1, 2007, no Seller or Purchased Subsidiary, nor any director, officer, employee or agent thereof, acting on its, his or her own behalf or on behalf of any of the foregoing Persons, has offered, promised, authorized the payment of, or paid, any money, or the transfer of anything of value, directly or indirectly, to or for the benefit of: (a) any employee, official, agent or other representative of any foreign Governmental Authority, or of any public international organization; or (b) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any act or decision of such recipient in the recipient's official capacity, or inducing such recipient to use his, her or its influence to affect any act or decision of such foreign government or department, agency or instrumentality thereof or of such public international organization, or securing any improper advantage, in the case of both clause (a) and (b) above, in order to assist any Seller or any Purchased Subsidiary to obtain or retain business for, or to direct business to, any Seller or any Purchased Subsidiary and under circumstances that would subject any Seller or any Purchased Subsidiary to material Liability under any applicable Laws of the United States (including the FCPA) or of any foreign jurisdiction where any Seller or any Purchased Subsidiary does business relating to corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses.

Section 4.20 Brokers and Other Advisors. No broker, investment banker, financial advisor, counsel (other than legal counsel) or other Person is entitled to any broker's, finder's or financial advisor's fee or commission (collectively, "Advisory Fees") in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sellers or any Affiliate of any Seller.

Section 4.21 Investment Representations.

(a) Each Seller is acquiring the Parent Shares for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Each Seller agrees that it shall not transfer any of the Parent Shares, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Each Seller is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Each Seller understands that the acquisition of the Parent Shares to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Each Seller and its officers have experience as an investor in the Equity Interests of companies such as the ones being transferred pursuant to this Agreement and each Seller acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Parent Shares to be acquired by it pursuant to the transactions contemplated by this Agreement.

(d) Each Seller further understands and acknowledges that the Parent Shares have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Parent Shares may not be sold, transferred, offered

09-50026-mg Doc 2968-2 Filed 07/01/09 Entered 07/01/09 23:16:21 Exhibit A
Pg 56 of 182

for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Each Seller acknowledges that the offer and sale of the Parent Shares has not been accomplished by the publication of any advertisement.

Section 4.22 No Other Representations or Warranties of Sellers. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN THIS **ARTICLE IV**, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26,** AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF THEM OR OTHER COMMUNICATIONS BETWEEN THEM OR ANY OF THEIR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, OR ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (C) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

Section 5.1 Organization and Good Standing. Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of

incorporation. Purchaser has the requisite corporate power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 5.2 Authorization; Enforceability.

(a) Purchaser has the requisite corporate power and authority to (i) execute and deliver this Agreement and the Ancillary Agreements to which it is a party; (ii) perform its obligations hereunder and thereunder; and (iii) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party.

(b) This Agreement constitutes, and each of the Ancillary Agreements to which Purchaser is a party, when duly executed and delivered by Purchaser, shall constitute, a valid and legally binding obligation of Purchaser (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of each Seller that is a party thereto and the other applicable parties thereto), enforceable against Purchaser in accordance with its respective terms and conditions, except as may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 5.3 Noncontravention; Consents.

(a) The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by Purchaser of the transactions contemplated hereby and thereby, do not (i) violate any Law to which Purchaser or its assets is subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of Purchaser; or (iii) create a breach, default, termination, cancellation or acceleration of any obligation of Purchaser under any Contract to which Purchaser is a party or by which Purchaser or any of its assets or properties is bound or subject, except for any of the foregoing in the cases of clauses (i) and (iii), that would not reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby or thereby or to perform any of its obligations under this Agreement or any Ancillary Agreement to which it is a party (a "Purchaser Material Adverse Effect").

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required by Purchaser for the consummation by Purchaser of the transactions contemplated by this Agreement or the Ancillary Agreements to which it is a party or the compliance by Purchaser with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Governmental Authority, the failure of which to be received

or made would not, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect.

Section 5.4 Capitalization.

(a) As of the date hereof, Sponsor holds beneficially and of record 1,000 shares of common stock, par value $0.01 per share, of Purchaser, which constitutes all of the outstanding capital stock of Purchaser, and all such capital stock is validly issued, fully paid and nonassessable.

(b) Immediately following the Closing, the authorized capital stock of Purchaser (or, if a Holding Company Reorganization has occurred prior to the Closing, Holding Company) will consist of 2,500,000,000 shares of common stock, par value $0.01 per share ("Common Stock"), and 1,000,000,000 shares of preferred stock, par value $0.01 per share ("Preferred Stock"), of which 360,000,000 shares of Preferred Stock are designated as Series A Fixed Rate Cumulative Perpetual Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock").

(c) Immediately following the Closing, (i) Canada or one or more of its Affiliates will hold beneficially and of record 58,368,644 shares of Common Stock and 16,101,695 shares of Series A Preferred Stock (collectively, the "Canada Shares"), (ii) Sponsor or one or more of its Affiliates collectively will hold beneficially and of record 304,131,356 shares of Common Stock and 83,898,305 shares of Series A Preferred Stock (collectively, the "Sponsor Shares") and (iii) the New VEBA will hold beneficially and of record 87,500,000 shares of Common Stock and 260,000,000 shares of Series A Preferred Stock (collectively, the "VEBA Shares"). Immediately following the Closing, there will be no other holders of Common Stock or Preferred Stock.

(d) Except as provided under the Parent Warrants, VEBA Warrants, Equity Incentive Plans or as disclosed on the Purchaser's Disclosure Schedule, there are and, immediately following the Closing, there will be no outstanding options, warrants, subscriptions, calls, convertible securities, phantom equity, equity appreciation or similar rights, or other rights or Contracts (contingent or otherwise) (including any right of conversion or exchange under any outstanding security, instrument or other Contract or any preemptive right) obligating Purchaser to deliver or sell, or cause to be issued, delivered or sold, any shares of its capital stock or other equity securities, instruments or rights that are, directly or indirectly, convertible into or exercisable or exchangeable for any shares of its capital stock. There are no outstanding contractual obligations of Purchaser to repurchase, redeem or otherwise acquire any shares of its capital stock or to provide funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any other Person. There are no voting trusts, shareholder agreements, proxies or other Contracts or understandings in effect with respect to the voting or transfer of any of the shares of Common Stock to which Purchaser is a party or by which Purchaser is bound. Except as provided under the Equity Registration Rights Agreement or as disclosed in the Purchaser's Disclosure Schedule, Purchaser has not granted or agreed to grant any holders of shares of Common Stock or securities

convertible into shares of Common Stock registration rights with respect to such shares under the Securities Act.

(e) Immediately following the Closing, (i) all of the Canada Shares, the Parent Shares and the Sponsor Shares will be duly and validly authorized and issued, fully paid and nonassessable, and will be issued in accordance with the registration or qualification provisions of the Securities Act or pursuant to valid exemptions therefrom and (ii) none of the Canada Shares, the Parent Shares or the Sponsor Shares will be issued in violation of any preemptive rights.

Section 5.5 Valid Issuance of Shares. The Parent Shares, Adjustment Shares and the Common Stock underlying the Parent Warrants, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement and the related warrant agreement, as applicable, will be (a) validly issued, fully paid and nonassessable and (b) free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities Laws and Encumbrances created by or imposed by Sellers. Assuming the accuracy of the representations of Sellers in **Section 4.21**, the Parent Shares, Adjustment Shares and Parent Warrants will be issued in compliance with all applicable federal and state securities Laws.

Section 5.6 Investment Representations.

(a) Purchaser is acquiring the Transferred Equity Interests for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Purchaser agrees that it shall not transfer any of the Transferred Equity Interests, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Purchaser is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Purchaser understands that the acquisition of the Transferred Equity Interests to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Purchaser and its officers have experience as an investor in Equity Interests of companies such as the ones being transferred pursuant to this Agreement and Purchaser acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Transferred Equity Interests to be acquired by it pursuant to the transactions contemplated hereby.

(d) Purchaser further understands and acknowledges that the Transferred Equity Interests have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Transferred Equity Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Purchaser acknowledges that the offer and sale of the Transferred Equity Interests has not been accomplished by the publication of any advertisement.

Section 5.7 Continuity of Business Enterprise. It is the present intention of Purchaser to directly, or indirectly through its Subsidiaries, continue at least one significant historic business line of each Seller, or use at least a significant portion of each Seller's historic business assets in a business, in each case, within the meaning of Treas. Reg. § 1.368-1(d).

Section 5.8 Integrated Transaction. Sponsor has contributed, or will, prior to the Closing, contribute the UST Credit Facilities, a portion of the DIP Facility that is owed as of the Closing and the UST Warrant to Purchaser solely for the purposes of effectuating the transactions contemplated by this Agreement.

Section 5.9 No Other Representations or Warranties of Sellers. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN **ARTICLE IV**, PURCHASER FURTHER HEREBY ACKNOWLEDGES AND AGREES THAT SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26,** AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF IT OR OTHER COMMUNICATIONS BETWEEN IT OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION OR (C) ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (D) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE VI
COVENANTS

Section 6.1 Access to Information.

(a) Sellers agree that, until the earlier of the Executory Contract Designation Deadline and the termination of this Agreement, Purchaser shall be entitled, through its Representatives or otherwise, to have reasonable access to the executive officers and Representatives of Sellers and the properties and other facilities, businesses, books, Contracts, personnel, records and operations (including the Purchased Assets and Assumed Liabilities) of Sellers and their Subsidiaries, including access to systems, data, databases for benefit plan administration; provided however, that no such investigation or examination shall be permitted to the extent that it would, in Sellers' reasonable determination, require any Seller, any Subsidiary of any Seller or any of their respective Representatives to disclose information subject to attorney-client privilege or in conflict with any confidentiality agreement to which any Seller, any Subsidiary of any Seller or any of their respective Representatives are bound (in which case, to the extent requested by Purchaser, Sellers will use reasonable best efforts to seek an amendment or appropriate waiver, or necessary consents, as may be required to avoid such conflict, or restructure the form of access, so as to permit the access requested); provided further, that notwithstanding the notice provisions in **Section 9.2** hereof, all such requests for access to the executive officers of Sellers shall be directed, prior to the Closing, to the Chief Financial Officer of Parent or his designee, and following the Closing, to the Chief Restructuring Officer of Parent or his or her designee. If any material is withheld pursuant to this **Section 6.1(a)**, Seller shall inform Purchaser in writing as to the general nature of what is being withheld and the reason for withholding such material.

(b) Any investigation and examination contemplated by this **Section 6.1** shall be subject to restrictions set forth in **Section 6.24** and under applicable Law. Sellers shall cooperate, and shall cause their Subsidiaries and each of their respective Representatives to cooperate, with Purchaser and its Representatives in connection with such investigation and examination, and each of Purchaser and its Representatives shall use their reasonable best efforts to not materially interfere with the business of Sellers and their Subsidiaries. Without limiting the generality of the foregoing, subject to **Section 6.1(a),** such investigation and examination shall include reasonable access to Sellers' executive officers (and employees of Sellers and their respective Subsidiaries identified by such executive officers), offices, properties and other facilities, and books, Contracts and records (including any document retention policies of Sellers) and access to accountants of Sellers and each of their respective Subsidiaries (provided that Sellers and each of their respective Subsidiaries, as applicable, shall have the right to be present at any meeting between any such accountant and Purchaser or Representative of Purchaser, whether such meeting is in person, telephonic or otherwise) and Sellers and each of their respective Subsidiaries and their Representatives shall prepare and furnish to Purchaser's Representatives such additional financial and operating data and other information as Purchaser may from time to time reasonably request, subject, in each case, to the confidentiality restrictions outlined in this **Section 6.1**. Notwithstanding anything contained herein to the contrary, Purchaser shall consult with Sellers prior to conducting

any environmental investigations or examinations of any nature, including Phase I and Phase II site assessments and any environmental sampling in respect of the Transferred Real Property.

Section 6.2 Conduct of Business.

(a) Except as (i) otherwise expressly contemplated by or permitted under this Agreement, including the DIP Facility; (ii) disclosed on Section 6.2 of the Sellers' Disclosure Schedule; (iii) approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent); or (iv) required by or resulting from any changes to applicable Laws, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, Sellers shall and shall cause each Purchased Subsidiary to (A) conduct their operations in the Ordinary Course of Business, (B) not take any action inconsistent with this Agreement or with the consummation of the Closing, (C) use reasonable best efforts to preserve in the Ordinary Course of Business and in all material respects the present relationships of Sellers and each of their Subsidiaries with their respective customers, suppliers and others having significant business dealings with them, (D) not take any action to cause any of Sellers' representations and warranties set forth in **ARTICLE IV** to be untrue in any material respect as of any such date when such representation or warranty is made or deemed to be made and (E) not take any action that would reasonably be expected to materially prevent or delay the Closing.

(b) Subject to the exceptions contained in clauses (i) through (iv) of **Section 6.2(a)**, each Seller agrees that, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), such Seller shall not, and shall not permit any of the Key Subsidiaries (and in the case of clauses (i), (ix), (xiii) or (xvi), shall not permit any Purchased Subsidiary) to:

(i) take any action with respect to which any Seller has granted approval rights to Sponsor under any Contract, including under the UST Credit Facilities, without obtaining the prior approval of such action from Sponsor;

(ii) issue, sell, pledge, create an Encumbrance or otherwise dispose of or authorize the issuance, sale, pledge, Encumbrance or disposition of any Equity Interests of the Transferred Entities, or grant any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any such Equity Interests;

(iii) declare, set aside or pay any dividend or make any distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value with respect to any Equity Interest of Seller or any Key Subsidiary), except for dividends and distributions among the Purchased Subsidiaries;

(iv) directly or indirectly, purchase, redeem or otherwise acquire any Equity Interests or any rights to acquire any Equity Interests of any Seller or Key Subsidiary;

(v) materially change any of its financial accounting policies or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as permitted by GAAP, a SEC rule, regulation or policy or applicable Law, or as modified by Parent as a result of the filing of the Bankruptcy Cases;

(vi) adopt any amendments to its Organizational Documents or permit the adoption of any amendment of the Organizational Documents of any Key Subsidiary or effect a split, combination or reclassification or other adjustment of Equity Interests of any Purchased Subsidiary or a recapitalization thereof;

(vii) sell, pledge, lease, transfer, assign or dispose of any Purchased Asset or permit any Purchased Asset to become subject to any Encumbrance, other than a Permitted Encumbrance, in each case, except in the Ordinary Course of Business or pursuant to a Contract in existence as of the date hereof (or entered into in compliance with this **Section 6.2**);

(viii) (A) incur or assume any Indebtedness for borrowed money or issue any debt securities, except for Indebtedness for borrowed money incurred by Purchased Subsidiaries under existing lines of credit (including through the incurrence of Intercompany Obligations) to fund operations of Purchased Subsidiaries and Indebtedness for borrowed money incurred by Sellers under the DIP Facility or (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, except for Indebtedness for borrowed money among any Seller and Subsidiary or among the Subsidiaries;

(ix) discharge or satisfy any Indebtedness in excess of $100,000,000 other than the discharge or satisfaction of any Indebtedness when due in accordance with its originally scheduled terms;

(x) other than as is required by the terms of a Parent Employee Benefit Plan and Policy (in effect on the date hereof and set forth on Section 4.10 of the Sellers' Disclosure Schedule), any Assumed Plan (in effect on the date hereof) the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement, the Settlement Agreement, the UAW Retiree Settlement Agreement or as may be required by applicable Law or TARP or under any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor, (A) increase the compensation or benefits of any Employee of Sellers or any Purchased Subsidiary (except for increases in salary or wages in the Ordinary Course of Business with respect to Employees who are not current or former directors or officers of Sellers or Seller Key Personnel), (B) grant any severance or termination pay to any Employee of Sellers or any Purchased

Subsidiary except for severance or termination pay provided under any Parent Employee Benefit Plan and Policy or as the result of a settlement of any pending Claim or charge involving a Governmental Authority or litigation with respect to Employees who are not current or former officers or directors of Sellers or Seller Key Personnel), (C) establish, adopt, enter into, amend or terminate any Benefit Plan (including any change to any actuarial or other assumption used to calculate funding obligations with respect to any Benefit Plan or any change to the manner in which contributions to any Benefit Plan are made or the basis on which such contributions are determined), except where any such action would reduce Sellers' costs or Liabilities pursuant to such plan, (D) grant any awards under any Benefit Plan (including any equity or equity-based awards), (E) increase or promise to increase or provide for the funding under any Benefit Plan, (F) forgive any loans to Employees of Sellers or any Purchased Subsidiary (other than as part of a settlement of any pending Claim or charge involving a Governmental Authority or litigation in the Ordinary Course of Business or with respect to obligations of Employees whose employment is terminated by Sellers or a Purchased Subsidiary in the Ordinary Course of Business, other than Employees who are current or former officers or directors of Sellers or Seller Key Personnel or directors of Sellers or a Purchased Subsidiary) or (G) exercise any discretion to accelerate the time of payment or vesting of any compensation or benefits under any Benefit Plan;

(xi) modify, amend, terminate or waive any rights under any Affiliate Contract or Seller Material Contract (except for any dealer sales and service Contracts or as contemplated by **Section 6.7**) in any material respect in a manner that is adverse to any Seller that is a party thereto, other than in the Ordinary Course of Business;

(xii) enter into any Seller Material Contract other than as contemplated by **Section 6.7**;

(xiii) acquire (including by merger, consolidation, combination or acquisition of Equity Interests or assets) any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeds $100,000,000;

(xiv) alter, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Key Subsidiary, or adopt or approve a plan with respect to any of the foregoing;

(xv) enter into any Contract that limits or otherwise restricts or that would reasonably be expected to, after the Closing, restrict or limit in any material respect (A) Purchaser or any of its Subsidiaries or any successor thereto or (B) any Affiliates of Purchaser or any successor thereto, in the case of each of

clause (A) or (B), from engaging or competing in any line of business or in any geographic area;

(xvi) enter into any Contracts for capital expenditures, exceeding $100,000,000 in the aggregate in connection with any single project or group of related projects;

(xvii) open or reopen any major production facility; and

(xviii) agree, in writing or otherwise, to take any of the foregoing actions.

Section 6.3 Notices and Consents.

(a) Sellers shall and shall cause each of their Subsidiaries to, and Purchaser shall use reasonable best efforts to, promptly give all notices to, obtain all material consents, approvals or authorizations from, and file all notifications and related materials with, any third parties (including any Governmental Authority) that may be or become necessary to be given or obtained by Sellers or their Affiliates, or Purchaser, respectively, in connection with the transactions contemplated by this Agreement.

(b) Each of Purchaser and Parent shall, to the extent permitted by Law, promptly notify the other Party of any communication it or any of its Affiliates receives from any Governmental Authority relating to the transactions contemplated by this Agreement and permit the other Party to review in advance any proposed substantive communication by such Party to any Governmental Authority. Neither Purchaser nor Parent shall agree to participate in any material meeting with any Governmental Authority in respect of any significant filings, investigation (including any settlement of the investigation), litigation or other inquiry unless it consults with the other Party in advance and, to the extent permitted by such Governmental Authority, gives the other Party the opportunity to attend and participate at such meeting; provided, however, in the event either Party is prohibited by applicable Law or such Governmental Authority from participating in or attending any such meeting, then the Party who participates in such meeting shall keep the other Party apprised with respect thereto to the extent permitted by Law. To the extent permitted by Law, Purchaser and Parent shall coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Party may reasonably request in connection with the foregoing, including, to the extent reasonably practicable, providing to the other Party in advance of submission, drafts of all material filings, submissions, correspondences or other written communications, providing the other Party with an opportunity to comment on the drafts, and, where practicable, incorporating such comments, if any, into the final documents. To the extent permitted by applicable Law, Purchaser and Parent shall provide each other with copies of all material correspondences, filings or written communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement or the transactions contemplated by this Agreement.

(c) None of Purchaser, Parent or their respective Affiliates shall be required to pay any fees or other payments to any Governmental Authorities in order to obtain any authorization, consent, Order or approval (other than normal filing fees and administrative fees that are imposed by Law on Purchaser), and in the event that any fees in addition to normal filing fees imposed by Law may be required to obtain any such authorization, consent, Order or approval, such fees shall be for the account of Purchaser.

(d) Notwithstanding anything to the contrary contained herein, no Seller shall be required to make any expenditure or incur any Liability in connection with the requirements set forth in this **Section 6.3**.

Section 6.4 Sale Procedures; Bankruptcy Court Approval.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or better competing Bids with respect to an Alternative Transaction. Nothing contained herein shall be construed to prohibit Sellers and their respective Affiliates and Representatives from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Alternative Transaction but only to the extent that Sellers determine in good faith that such actions are permitted or required by the Sale Procedures Order.

(b) On the Petition Date, Sellers filed with the Bankruptcy Court the Bankruptcy Cases under the Bankruptcy Code and a motion (and related notices and proposed Orders) (the "Sale Procedures and Sale Motion"), seeking entry of (i) the sale procedures order, in the form attached hereto as **Exhibit H** (the "Sale Procedures Order"), and (ii) the sale approval order, in the form attached hereto as **Exhibit I** (the "Sale Approval Order"). The Sale Approval Order shall declare that if there is an Agreed G Transaction, (A) this Agreement constitutes a "plan" of Parent and Purchaser solely for purposes of Sections 368 and 354 of the Tax Code and (B) the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers, are intended to constitute a reorganization of Parent pursuant to Section 368(a)(1)(G) of the Tax Code. To the extent reasonably practicable, Sellers shall consult with and provide Purchaser and the UAW a reasonable opportunity to review and comment on material motions, applications and supporting papers prepared by Sellers in connection with this Agreement prior to the filing or delivery thereof in the Bankruptcy Cases.

(c) Purchaser acknowledges that Sellers may receive bids ("Bids") from prospective purchasers (such prospective purchasers, the "Bidders") with respect to an Alternative Transaction, as provided in the Sale Procedures Order. All Bids (other than Bids submitted by Purchaser) shall be submitted with two copies of this Agreement marked to show changes requested by the Bidder.

(d) If Sellers receive any Bids, Sellers shall have the right to select, and seek final approval of the Bankruptcy Court for, the highest or otherwise best Bid or Bids from the Bidders (the "Superior Bid"), which will be determined in accordance with the Sale Procedure Order.

(e) Sellers shall use their reasonable best efforts to obtain entry of the Sale Approval Order on the Bankruptcy Court's docket as soon as practicable, and in no event no later than July 10, 2009.

(f) Sellers shall use reasonable best efforts to comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the transactions contemplated by this Agreement, including serving on all required Persons in the Bankruptcy Cases (including all holders of Encumbrances and parties to the Purchased Contracts), a notice of the Sale Procedures and Sale Motion, the Sale Hearing and the objection deadline in accordance with Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (as modified by Orders of the Bankruptcy Court), the Sale Procedures Order or other Orders of the Bankruptcy Court, including General Order M-331 issued by the Bankruptcy Court, and any applicable local rules of the Bankruptcy Court.

(g) Sellers shall provide Purchaser with a reasonable opportunity to review and comment on all motions, applications and supporting papers prepared by Sellers in connection with this Agreement (including forms of Orders and of notices to interested parties) prior to the filing or delivery thereof in the Bankruptcy Cases. All motions, applications and supporting papers prepared by Sellers and relating to the approval of this Agreement (including forms of Orders and of notices to interested parties) to be filed or delivered on behalf of Sellers shall be reasonably acceptable in form and substance to Purchaser. Sellers shall provide written notice to Purchaser of all matters that are required to be served on Sellers' creditors pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. In the event the Sale Procedures Order and the Sale Approval Order is appealed, Sellers shall use their reasonable best efforts to defend such appeal.

(h) Purchaser agrees, to the extent reasonably requested by Sellers, to cooperate with and assist Sellers in seeking entry of the Sale Procedures Order and the Sale Approval Order by the Bankruptcy Court, including attending all hearings on the Sale Procedures and Sale Motion.

Section 6.5 Supplements to Purchased Assets. Purchaser shall, from the date hereof until the Executory Contract Designation Deadline, have the right to designate in writing additional Personal Property it wishes to designate as Purchased Assets if such Personal Property is located at a parcel of leased real property where the underlying lease has been designated as a Rejectable Executory Contract pursuant to **Section 6.6** following the Closing.

Section 6.6 Assumption or Rejection of Contracts.

(a) The Assumable Executory Contract Schedule sets forth a list of Executory Contracts entered into by Sellers that Sellers may assume and assign to Purchaser in accordance with this **Section 6.6(a)** (each, an "Assumable Executory Contract"). Any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule and Section 6.6(a)(ii) of the Sellers' Disclosure Schedule shall automatically be designated as an

09-50026-reg Doc 13634-4 Filed 07/06/16 Entered 07/06/16 13:17:58 Exhibit A
Pg 120 of 182

Assumable Executory Contract and deemed to be set forth on the Assumable Executory Contract Schedule. Purchaser may, until the Executory Contract Designation Deadline, designate in writing any additional Executory Contract it wishes to designate as an Assumable Executory Contract and include on the Assumable Executory Contract Schedule, or any Assumable Executory Contract it no longer wishes to designate as an Assumable Executory Contract and remove from the Assumable Executory Contract Schedule; provided, however, that (i) Purchaser may not designate as an Assumable Executory Contract any (A) Rejectable Executory Contract, unless Sellers have consented to such designation in writing or (B) Contract that has previously been rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, and (ii) Purchaser may not remove from the Assumable Executory Contract Schedule (v) the UAW Collective Bargaining Agreement, (w) any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule or Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, (x) any Contract that has been previously assumed by Sellers pursuant to Section 365 of the Bankruptcy Code, (y) any Deferred Termination Agreement (or the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) or (z) any Participation Agreement (or the related Continuing Brand Dealer Agreement). Except as otherwise provided above, for each Assumable Executory Contract, Purchaser must determine, prior to the Executory Contract Designation Deadline, the date on which it seeks to have the assumption and assignment become effective, which date may be the Closing Date or a later date (but not an earlier date). The term "Executory Contract Designation Deadline" shall mean the date that is thirty (30) calendar days following the Closing Date, or if such date is not a Business Day, the next Business Day, or if mutually agreed upon by the Parties, any later date up to and including the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization. For the avoidance of doubt, the Executory Contract Designation Deadline may be extended by mutual agreement of the Parties with respect to any single unassumed and unassigned Executory Contract, groups of unassumed and unassigned Executory Contracts or all of the unassumed and unassigned Executory Contracts.

(b) Sellers may, until the Closing, provide written notice (a "Notice of Intent to Reject") to Purchaser of Sellers' intent to designate any Executory Contract (that has not been designated as an Assumable Executory Contract) as a Rejectable Executory Contract (each a "Proposed Rejectable Executory Contract"). Following receipt of a Notice of Intent to Reject, Purchaser shall as soon as reasonably practicable, but in no event later than fifteen (15) calendar days following receipt of a Notice of Intent to Reject (the "Option Period"), provide Sellers written notice of Purchaser's designation of one or more Proposed Rejectable Executory Contracts identified in such Notice of Intent to Reject as an Assumable Executory Contract. Each Proposed Rejectable Executory Contract that has not been designated by Purchaser as an Assumable Executory Contract during the applicable Option Period shall automatically, without further action by Sellers, be designated as a Rejectable Executory Contract. A "Rejectable Executory Contract" is an Executory Contract that Sellers may, but are not obligated to, reject pursuant Section 365 of the Bankruptcy Code.

(c) Immediately following the Closing, each Executory Contract entered into by Sellers and then in existence that has not previously been designated as an Assumable

Executory Contract, a Rejectable Executory Contract or a Proposed Rejectable Executory Contract, and that has not otherwise been assumed or rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, shall be deemed to be an Executory Contract subject to subsequent designation by Purchaser as an Assumable Executory Contract or a Rejectable Executory Contract (each a "Deferred Executory Contract").

(d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

(e) From and after the Closing and during the applicable period specified below, Purchaser shall be obligated to pay or cause to be paid all amounts due in respect of Sellers' performance (i) under each Proposed Rejectable Executory Contract, during the pendency of the applicable Option Period under such Proposed Rejectable Executory Contract, (ii) under each Deferred Executory Contract, for so long as such Contract remains a Deferred Executory Contract, (iii) under each Assumable Executory Contract,

as long as such Contract remains an Assumable Executory Contract and (iv) under each GM Assumed Contract, until the applicable Assumption Effective Date. At and after the Closing and until such time as any Shared Executory Contract is either (y) rejected by Sellers pursuant to the provision set forth in this **Section 6.6** or (z) assumed by Sellers and subsequently modified with Purchaser's consent so as to no longer be applicable to the affected Owned Real Property, Purchaser shall reimburse Sellers as and when requested by Sellers for Purchasers' and its Affiliates' allocable share of all costs and expenses incurred under such Shared Executory Contract.

(f) Sellers and Purchaser shall comply with the procedures set forth in the Sale Procedures Order with respect to the assumption and assignment or rejection of any Executory Contract pursuant to, and in accordance with, this **Section 6.6**.

(g) No designation of any Executory Contract for assumption and assignment or rejection in accordance with this **Section 6.6** shall give rise to any right to any adjustment to the Purchase Price.

(h) Without limiting the foregoing, if, following the Executory Contract Designation Deadline, Sellers or Purchaser identify an Executory Contract that has not previously been identified as a Contract for assumption and assignment, and such Contract is important to Purchaser's ability to use or hold the Purchased Assets or operate its businesses in connection therewith, Sellers will assume and assign such Contract and assign it to Purchaser without any adjustment to the Purchase Price; provided that Purchaser consents and agrees at such time to (i) assume such Executory Contract and (ii) and discharge all Cure Amounts in respect hereof.

Section 6.7 Deferred Termination Agreements; Participation Agreements.

(a) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into short-term deferred voluntary termination agreements in substantially the form attached hereto as **Exhibit J-1** (in respect of all Saturn Discontinued Brand Dealer Agreements), **Exhibit J-2** (in respect of all Hummer Discontinued Brand Dealer Agreements) and **Exhibit J-3** (in respect of all non-Saturn and non-Hummer Discontinued Brand Dealer Agreements and all Excluded Continuing Brand Dealer Agreements) that will, when executed by the relevant dealer counterparty thereto, modify the respective Discontinued Brand Dealer Agreements and selected Continuing Brand Dealer Agreements (collectively, the "Deferred Termination Agreements"). For the avoidance of doubt, (i) each Deferred Termination Agreement, and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement modified thereby, will automatically be an Assumable Executory Contract hereunder upon valid execution of such Deferred Termination Agreement by the parties thereto and (ii) all Discontinued Brand Dealer Agreements that are not modified by a Deferred Termination Agreement, and all Continuing Brand Dealer Agreements that are not modified by either a Deferred Termination Agreement or a Participation Agreement, will automatically be a Rejectable Executory Contract hereunder.

(b) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into agreements, substantially in the form attached hereto as **Exhibit K** that will modify all Continuing Brand Dealer Agreements (other than the Continuing Brand Dealer Agreements that are proposed to be modified by Deferred Termination Agreements) (the "Participation Agreements"). For the avoidance of doubt, (i) all Participation Agreements, and the related Continuing Brand Dealer Agreements, will automatically be Assumable Executory Contracts hereunder upon valid execution of such Participation Agreement and (ii) all Continuing Brand Dealer Agreements that are proposed to be modified by a Participation Agreement and are not modified by a Participation Agreement will be offered Deferred Termination Agreements pursuant to **Section 6.7(a)**.

Section 6.8 [Reserved]

Section 6.9 Purchaser Assumed Debt; Wind Down Facility.

(a) Purchaser shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of the Purchaser Assumed Debt so as to be assumed by Purchaser immediately prior to the Closing. Purchaser shall use reasonable best efforts to enter into definitive financing agreements with respect to the Purchaser Assumed Debt so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of $950,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at LIBOR plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof), and to be subject to mandatory repayment from the proceeds of asset sales (other than the sale of Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

Section 6.10 Litigation and Other Assistance. In the event and for so long as any Party is actively contesting or defending against any action, investigation, charge, Claim or demand by a third party in connection with any transaction contemplated by this Agreement, the other Parties shall reasonably cooperate with the contesting or defending Party and its counsel in such contest or defense, make available its personnel and provide such testimony and access to its books, records and other materials as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party; provided, however, that no Party shall be required to provide the contesting or defending party with any access to its books, records or materials if such access would violate the attorney-client privilege or conflict with any confidentiality obligations to which the non-contesting or defending Party is subject. In addition, the Parties agree to cooperate in connection with the making or filing of claims, requests for information, document retrieval and other activities in connection with any

and all Claims made under insurance policies specified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule to the extent any such Claim relates to any Purchased Asset or Assumed Liability. For the avoidance of doubt, this **Section 6.10** shall not apply to any action, investigation, charge, Claim or demand by any of Sellers or their Affiliates, on the one hand, or Purchaser or any of its Affiliates, on the other hand.

Section 6.11 Further Assurances.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use their reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all actions necessary, proper or advisable to consummate and make effective as promptly as practicable, the transactions contemplated by this Agreement in accordance with the terms hereof and to bring about the satisfaction of all other conditions to the other Parties' obligations hereunder; provided, however, that nothing in this Agreement shall obligate Sellers or Purchaser, or any of their respective Affiliates, to waive or modify any of the terms and conditions of this Agreement or any documents contemplated hereby, except as expressly set forth herein. The Parties acknowledge that Sponsor's acquisition of interest is a sovereign act and that no filings should be made by Sponsor or Purchaser in non-United States jurisdictions.

(b) The Parties shall negotiate the forms, terms and conditions of the Ancillary Agreements, to the extent the forms thereof are not attached to this Agreement, on the basis of the respective term sheets attached to this Agreement, in good faith, with such Ancillary Agreements to set forth terms on an Arms-Length Basis and incorporate usual and customary provisions for similar agreements.

(c) Until the Closing, Sellers shall maintain a team of appropriate personnel (each such team, a "Transition Team") to assist Purchaser and its Representatives in connection with Purchaser's efforts to complete prior to the Closing the activities described below. Sellers shall use their reasonable best efforts to cause the Transition Team to (A) meet with Purchaser and its Representatives on a regular basis at such times as Purchaser may reasonably request and (B) take such action and provide such information, including background and summary information, as Purchaser and its Representatives may reasonably request in connection with the following activities:

(i) evaluation and identification of all Contracts that Purchaser may elect to designate as Purchased Contracts or Excluded Contracts, consistent with its rights under this Agreement;

(ii) evaluation and identification of all assets and entities that Purchaser may elect to designate as Purchased Assets or Excluded Assets, consistent with its rights under this Agreement;

(iii) maintaining and obtaining necessary governmental consents, permits, authorizations, licenses and financial assurance for operation of the business by Purchaser following the Closing;

(iv) obtaining necessary third party consents for operation of the business by Purchaser following the Closing;

(v) implementing the optimal structure for Purchaser and its subsidiaries to acquire and hold the Purchased Assets and operate the business following the Closing;

(vi) implementing the assumption of all Assumed Plans and otherwise satisfying the obligations of Purchaser as provided in **Section 6.17** with respect to Employment Related Obligations; and

(vii) such other transition matters as Purchaser may reasonably determine are necessary for Purchaser to fulfill its obligations and exercise its rights under this Agreement.

Section 6.12 Notifications.

(a) Sellers shall give written notice to Purchaser as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE IV** being or becoming untrue or inaccurate in any material respect as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case, as of such date), (ii) the failure by Sellers to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Sellers under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.2** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Sellers' representations or warranties, a failure to perform any of the covenants or agreements of Sellers or a failure to have satisfied the conditions to the obligations of Sellers under this Agreement. Such notice shall be in form of a certificate signed by an executive officer of Parent setting forth the details of such event and the action which Parent proposes to take with respect thereto.

(b) Purchaser shall give written notice to Sellers as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE V** being or becoming untrue or inaccurate in any material respect with respect to Purchaser as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case as of such date), (ii) the failure by Purchaser to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Purchaser under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.3** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Purchaser's representations or warranties, a failure to perform any of the covenants or agreements of Purchaser or a failure to have satisfied the conditions to the obligations of Purchaser under this Agreement. Such notice shall be in a form of a certificate signed by

an executive officer of Purchaser setting forth the details of such event and the action which Purchaser proposes to take with respect thereto.

Section 6.13 Actions by Affiliates. Each of Purchaser and Sellers shall cause their respective controlled Affiliates, and shall use their reasonable best efforts to ensure that each of their respective other Affiliates (other than Sponsor in the case of Purchaser) takes all actions reasonably necessary to be taken by such Affiliate in order to fulfill the obligations of Purchaser or Sellers, as the case may be, under this Agreement.

Section 6.14 Compliance Remediation. Except with respect to the Excluded Assets or Retained Liabilities, prior to the Closing, Sellers shall use reasonable best efforts to, and shall use reasonable best efforts to cause their Subsidiaries to use their reasonable best efforts to, cure in all material respects any instances of non-compliance with Laws or Orders, failures to possess or maintain Permits or defaults under Permits.

Section 6.15 Product Certification, Recall and Warranty Claims.

(a) From and after the Closing, Purchaser shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by Seller.

(b) From and after the Closing, Purchaser shall be responsible for the administration, management and payment of all Liabilities arising under (i) express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (ii) Lemon Laws. In connection with the foregoing clause (ii), (A) Purchaser shall continue to address Lemon Law Claims using the same procedural mechanisms previously utilized by the applicable Sellers and (B) for avoidance of doubt, Purchaser shall not assume Liabilities arising under the law of implied warranty or other analogous provisions of state Law, other than Lemon Laws, that provide consumer remedies in addition to or different from those specified in Sellers' express warranties.

(c) For the avoidance of doubt, Liabilities of the Transferred Entities arising from or in connection with products manufactured or sold by the Transferred Entities remain the responsibility of the Transferred Entities and shall be neither Assumed Liabilities nor Retained Liabilities for the purposes of this Agreement.

Section 6.16 Tax Matters; Cooperation.

(a) Prior to the Closing Date, Sellers shall prepare and timely file (or cause to be prepared and timely filed) all Tax Returns required to be filed prior to such date (taking into account any extension of time to file granted or obtained) that relate to Sellers, the Purchased Subsidiaries and the Purchased Assets in a manner consistent with

past practices (except as otherwise required by Law), and shall provide Purchaser prompt opportunity for review and comment and shall obtain Purchaser's written approval prior to filing any such Tax Returns. After the Closing Date, at Purchaser's election, Purchaser shall prepare, and the applicable Seller, Seller Subsidiary or Seller Group member shall timely file, any Tax Return relating to any Seller, Seller Subsidiary or Seller Group member for any Pre-Closing Tax Period or Straddle Period due after the Closing Date or other taxable period of any entity that includes the Closing Date, subject to the right of the applicable Seller to review any such material Tax Return. Purchaser shall prepare and file all other Tax Returns required to be filed after the Closing Date in respect of the Purchased Assets. Sellers shall prepare and file all other Tax Returns relating to the Post-Closing Tax Period of Sellers, subject to the prior review and approval of Purchaser, which approval may be withheld, conditioned or delayed with good reason. No Seller or Seller Group member shall be entitled to any payment or other consideration in addition to the Purchase Price with respect to the acquisition or use of any Tax items or attributes by Purchaser, any Purchased Subsidiary or Affiliates thereof. At Purchaser's request, any Seller or Seller Group member shall designate Purchaser or any of its Affiliates as a substitute agent for the Seller Group for Tax purposes. Purchaser shall be entitled to make all determinations, including the right to make or cause to be made any elections with respect to Taxes and Tax Returns of Sellers, Seller Subsidiaries, Seller Groups and Seller Group members with respect to Pre-Closing Tax Periods and Straddle Periods and with respect to the Tax consequences of the Relevant Transactions (including the treatment of such transactions as an Agreed G Transaction) and the other transactions contemplated by this Agreement, including (i) the "date of distribution or transfer" for purposes of Section 381(b) of the Tax Code, if applicable; (ii) the relevant Tax periods and members of the Seller Group and the Purchaser and its Affiliates; (iii) whether the Purchaser and/or any of its Affiliates shall be treated as a continuation of Seller Group; and (iv) any other determinations required under Section 381 of the Tax Code. Purchaser shall have the sole right to represent the interests, as applicable, of any Seller, Seller Group member or Purchased Subsidiary in any Tax proceeding in connection with any Tax Liability or any Tax item for any Pre-Closing Tax Period, Straddle Period or other Tax period affecting any such earlier Tax period. After the Closing, Purchaser shall have the right to assume control of any PLR or CA request filed by Sellers or any Affiliate thereof, including the right to represent Sellers and their Affiliates and to direct all professionals acting on their behalf in connection with such request, and no settlement, concession, compromise, commitment or other agreements in respect of such PLR or CA request shall be made without Purchaser's prior written consent.

(b) All Taxes required to be paid by any Seller or Seller Group member for any Pre-Closing Tax Period or any Straddle Period shall be timely paid. To the extent a Party hereto is liable for a Tax pursuant to this Agreement and such Tax is paid or payable by another Party or such other Party's Affiliates, the Party liable for such Tax shall make payment in the amount of such Tax to the other Party no later than three (3) days prior to the due date for payment of such Tax, unless a later time for payment is agreed to in writing by such other Party. To the extent that any Seller or Seller Group member receives or realizes the benefit of any Tax refund, abatement or credit that is a Purchased Asset, such Seller or Seller Group member receiving the benefit shall transfer

an amount equal to such refund, abatement or credit to Purchaser within fourteen (14) days of receipt or realization of the benefit.

(c) Purchaser and Sellers shall provide each other with such assistance and non-privileged information relating to the Purchased Assets as may reasonably be requested in connection with any Tax matter, including the matters contemplated by this **Section 6.16**, the preparation of any Tax Return or the performance of any audit, examination or other proceeding by any Taxing Authority, whether conducted in a judicial or administrative forum. Purchaser and Sellers shall retain and provide to each other all non-privileged records and other information reasonably requested by the other and that may be relevant to any such Tax Return, audit, examination or other proceeding.

(d) After the Closing, at Purchaser's election, Purchaser shall exercise exclusive control over the handling, disposition and settlement of any inquiry, examination or proceeding (including an audit) by a Governmental Authority (or that portion of any inquiry, examination or proceeding by a Governmental Authority) with respect to Sellers, any Subsidiary of Sellers or any Seller Group, provided that to the extent any such inquiry, examination or proceeding by a Governmental Authority could materially affect the Taxes due or payable by Sellers, Purchaser shall control the handling, disposition and settlement thereof, subject to reasonable consultation rights of Sellers. Each Party shall notify the other Party (or Parties) in writing promptly upon learning of any such inquiry, examination or proceeding. The Parties and their Affiliates shall cooperate with each other in any such inquiry, examination or proceeding as a Party may reasonably request. Neither Parent nor any of its Affiliates shall extend, without Purchaser's prior written consent, the statute of limitations for any Tax for which Purchaser or any of its Affiliates may be liable.

(e) Notwithstanding anything contained herein, Purchaser shall prepare and Sellers shall timely file all Tax Returns required to be filed in connection with the payment of Transfer Taxes.

(f) From the date of this Agreement to and including the Closing Date, except to the extent relating solely to an Excluded Asset or Retained Liability, no Seller, Seller Group member or Purchased Subsidiary shall, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed, and shall not be withheld if not resulting in any Tax impact on Purchaser or any Purchased Asset), (i) make, change, or terminate any material election with respect to Taxes (including elections with respect to the use of Tax accounting methods) of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture to which any Seller or Purchased Subsidiary is a party, (ii) settle or compromise any Claim or assessment for Taxes (including refunds) that could be reasonably expected to result in any adverse consequence on Purchaser or any Purchased Asset following the Closing Date, (iii) agree to an extension of the statute of limitations with respect to the assessment or collection of the Taxes of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture of which any Seller or Purchased Subsidiary is a party or (iv) make or surrender any Claim for a refund of a material amount of the Taxes of any of

Sellers or Purchased Subsidiaries or file an amended Tax Return with respect to a material amount of Taxes.

(g)

(i) Purchaser shall treat the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers (such transactions, collectively, the "Relevant Transactions"), as a reorganization pursuant to Section 368(a)(1)(G) of the Tax Code with any actual or deemed distribution by Parent qualifying solely under Sections 354 and 356 of the Tax Code but not under Section 355 of the Tax Code (a "G Transaction") if (x) the IRS issues a private letter ruling ("PLR") or executes a closing agreement ("CA"), in each case reasonably acceptable to Purchaser, confirming that the Relevant Transactions shall qualify as a G Transaction for U.S. federal income Tax purposes, or (y) Purchaser determines to treat the Relevant Transactions as so qualifying (clause (x) or (y), an "Agreed G Transaction"). In connection with the foregoing, Sellers shall use their reasonable best efforts to obtain a PLR or execute a CA with respect to the Relevant Transactions at least seven (7) days prior to the Closing Date. At least three (3) days prior to the Closing Date, Purchaser shall advise Parent in writing as to whether Purchaser has made a determination regarding the treatment of the Relevant Transactions for U.S. federal income Tax purposes and, if applicable, the outcome of any such determination.

(ii) On or prior to the Closing Date, Sellers shall deliver to Purchaser all information in the possession of Sellers and their Affiliates that is reasonably related to the determination of whether the Relevant Transactions constitute an Agreed G Transaction ("Relevant Information"), and, after the Closing, Sellers shall promptly provide to Purchaser any newly produced or obtained Relevant Information. For the avoidance of doubt, the Parties shall cooperate in taking any actions and providing any information that Purchaser determines is necessary or appropriate in furtherance of the intended U.S. federal income Tax treatment of the Relevant Transactions and the other transactions contemplated by this Agreement.

(iii) If Purchaser has not determined as of the Closing Date whether to treat the Relevant Transactions as an Agreed G Transaction, Purchaser shall make such determination in accordance with this **Section 6.16** prior to the due date (including validly obtained extensions) for filing the corporate income Tax Return for Parent's U.S. affiliated group (as defined in Section 1504 of the Tax Code) for the taxable year in which the Closing Date occurs, and shall convey such decision in writing to Parent, which decision shall be binding on Parent.

(iv) If the Relevant Transactions constitute an Agreed G Transaction under this **Section 6.16**: (A) Sellers shall use their reasonable best efforts, and Purchaser shall use reasonable best efforts to assist Sellers, to effectuate such treatment and the Parties shall not take any action or position inconsistent with, or

fail to take any necessary action in furtherance of, such treatment (subject to **Section 6.16(g)(vi)**); (B) the Parties agree that this Agreement shall constitute a "plan" of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code; (C) the board of directors of Parent and Purchaser shall, by resolution, approve the execution of this Agreement and expressly recognize its treatment as a "plan" of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code, and the treatment of the Relevant Transactions as a G Transaction for federal income Tax purposes; (D) Sellers shall provide Purchaser with a statement setting forth the adjusted Tax basis of the Purchased Assets and the amount of net operating losses and other material Tax attributes of Sellers and any Purchased Subsidiary that are available as of the Closing Date and after the close of any taxable year of any Seller or Seller Group member that impacts the numbers previously provided, all based on the best information available, but with no Liability for any errors or omissions in information; and (E) Sellers shall provide Purchaser with an estimate of the cancellation of Indebtedness income that Sellers and any Seller Group member anticipate realizing for the taxable year that includes the Closing Date, and shall provide revised numbers after the close of any taxable year of any Seller or Seller Group member that impacts this number.

(v) If the Relevant Transactions do not constitute an Agreed G Transaction under this **Section 6.16**, the Parties hereby agree, and Sellers hereby consent, to treat the sale of the Purchased Assets by Parent as a taxable asset sale for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**. In addition, the Parties hereby agree, and Sellers hereby consent, to treat the sales of the Purchased Assets by S Distribution and Harlem as taxable asset sales for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**.

(vi) No Party shall take any position with respect to the Relevant Transactions that is inconsistent with the position determined in accordance with this **Section 6.16**, unless, and then only to the extent, otherwise required to do so by a Final Determination.

(vii) Each Seller shall liquidate, as determined for U.S. federal income Tax purposes and to the satisfaction of Purchaser, no later than December 31, 2011, and each such liquidation may include a distribution of assets to a "liquidating trust" within the meaning of Treas. Reg. § 301.7701-4, the terms of which shall be satisfactory to Purchaser.

(viii) Effective no later than the Closing Date, Purchaser shall be treated as a corporation for federal income Tax purposes.

Section 6.17 Employees; Benefit Plans; Labor Matters.

(a) *Transferred Employees.* Effective as of the Closing Date, Purchaser or one of its Affiliates shall make an offer of employment to each Applicable Employee. Notwithstanding anything herein to the contrary and except as provided in an individual employment Contract with any Applicable Employee or as required by the terms of an Assumed Plan, offers of employment to Applicable Employees whose employment rights are subject to the UAW Collective Bargaining Agreement as of the Closing Date, shall be made in accordance with the applicable terms and conditions of the UAW Collective Bargaining Agreement and Purchaser's obligations under the Labor Management Relations Act of 1974, as amended. Each offer of employment to an Applicable Employee who is not covered by the UAW Collective Bargaining Agreement shall provide, until at least the first anniversary of the Closing Date, for (i) base salary or hourly wage rates initially at least equal to such Applicable Employee's base salary or hourly wage rate in effect as of immediately prior to the Closing Date and (ii) employee pension and welfare benefits, Contracts and arrangements that are not less favorable in the aggregate than those listed on Section 4.10 of the Sellers' Disclosure Schedule, but not including any Retained Plan, equity or equity-based compensation plans or any Benefit Plan that does not comply in all respects with TARP. For the avoidance of doubt, each Applicable Employee on layoff status, leave status or with recall rights as of the Closing Date, shall continue in such status and/or retain such rights after Closing in the Ordinary Course of Business. Each Applicable Employee who accepts employment with Purchaser or one of its Affiliates and commences working for Purchaser or one of its Affiliates shall become a "Transferred Employee." To the extent such offer of employment by Purchaser or its Affiliates is not accepted, Sellers shall, as soon as practicable following the Closing Date, terminate the employment of all such Applicable Employees. Nothing in this **Section 6.17(a)** shall prohibit Purchaser or any of its Affiliates from terminating the employment of any Transferred Employee after the Closing Date, subject to the terms and conditions of the UAW Collective Bargaining Agreement. It is understood that the intent of this **Section 6.17(a)** is to provide a seamless transition from Sellers to Purchaser of any Applicable Employee subject to the UAW Collective Bargaining Agreement. Except for Applicable Employees with non-standard individual agreements providing for severance benefits, until at least the first anniversary of the Closing Date, Purchaser further agrees and acknowledges that it shall provide to each Transferred Employee who is not covered by the UAW Collective Bargaining Agreement and whose employment is involuntarily terminated by Purchaser or its Affiliates on or prior to the first anniversary of the Closing Date, severance benefits that are not less favorable than the severance benefits such Transferred Employee would have received under the applicable Benefit Plans listed on Section 4.10 of the Sellers' Disclosure Schedule. Purchaser or one of its Affiliates shall take all actions necessary such that Transferred Employees shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual (except in the case of a defined benefit pension plan sponsored by Purchaser or any of its Affiliates in which Transferred Employees may commence participation after the Closing that is not an Assumed Plan), in any employee benefit plans (excluding equity compensation plans or programs) covering Transferred Employees after the Closing to the same extent as such Transferred Employee was

entitled as of immediately prior to the Closing Date to credit for such service under any similar employee benefit plans, programs or arrangements of any of Sellers or any Affiliate of Sellers; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such Transferred Employee or the funding for any such benefit. Such benefits shall not be subject to any exclusion for any pre-existing conditions to the extent such conditions were satisfied by such Transferred Employees under a Parent Employee Benefit Plan as of the Closing Date, and credit shall be provided for any deductible or out-of-pocket amounts paid by such Transferred Employee during the plan year in which the Closing Date occurs.

(b) *Employees of Purchased Subsidiaries*. As of the Closing Date, those employees of Purchased Subsidiaries who participate in the Assumed Plans, may, subject to the applicable Collective Bargaining Agreement, for all purposes continue to participate in such Assumed Plans, in accordance with their terms in effect from time to time. For the avoidance of any doubt, Purchaser shall continue the employment of any current Employee of any Purchased Subsidiary covered by the UAW Collective Bargaining Agreement on the terms and conditions of the UAW Collective Bargaining Agreement in effect immediately prior to the Closing Date, subject to its terms; provided, however, that nothing in this Agreement shall be construed to terminate the coverage of any UAW-represented Employee in an Assumed Plan if such Employee was a participant in the Assumed Plan immediately prior to the Closing Date. Further provided, that nothing in this Agreement shall create a direct employment relationship between Parent or Purchaser and an Employee of a Purchased Subsidiary or an Affiliate of Parent.

(c) *No Third Party Beneficiaries*. Nothing contained herein, express or implied, (i) is intended to confer or shall confer upon any Employee or Transferred Employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, (ii) except as set forth in **Section 9.11**, is intended to confer or shall confer upon any individual or any legal Representative of any individual (including employees, retirees, or dependents or beneficiaries of employees or retirees and including collective bargaining agents or representatives) any right as a third-party beneficiary of this Agreement or (iii) shall be deemed to confer upon any such individual or legal Representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal Representative shall be entitled to look only to the express terms of any such plans, program or arrangement for his or her rights thereunder. Nothing herein is intended to override the terms and conditions of the UAW Collective Bargaining Agreement.

(d) *Plan Authority.* Nothing contained herein, express or implied, shall prohibit Purchaser or its Affiliates, as applicable, from, subject to applicable Law and the terms of the UAW Collective Bargaining Agreement, adding, deleting or changing providers of benefits, changing, increasing or decreasing co-payments, deductibles or other requirements for coverage or benefits (e.g., utilization review or pre-certification requirements), and/or making other changes in the administration or in the design, coverage and benefits provided to such Transferred Employees. Without reducing the obligations of Purchaser as set forth in **Section 6.17(a)**, no provision of this Agreement

shall be construed as a limitation on the right of Purchaser or its Affiliates, as applicable, to suspend, amend, modify or terminate any employee benefit plan, subject to the terms of the UAW Collective Bargaining Agreement. Further, (i) no provision of this Agreement shall be construed as an amendment to any employee benefit plan, and (ii) no provision of this Agreement shall be construed as limiting Purchaser's or its Affiliate's, as applicable, discretion and authority to interpret the respective employee benefit and compensation plans, agreements arrangements, and programs, in accordance with their terms and applicable Law.

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies.* As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (the "Assumed Plans"), for the benefit of the Transferred Employees and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(f) *UAW Collective Bargaining Agreement.* Parent shall assume and assign to Purchaser, as of the Closing, the UAW Collective Bargaining Agreement and all rights and Liabilities of Parent relating thereto (including Liabilities for wages, benefits and other compensation, unfair labor practices, grievances, arbitrations and contractual obligations). With respect to the UAW Collective Bargaining Agreement, Purchaser agrees to (i) recognize the UAW as the exclusive collective bargaining representative for the Transferred Employees covered by the terms of the UAW Collective Bargaining Agreement, (ii) offer employment to all Applicable Employees covered by the UAW Collective Bargaining Agreement with full recognition of all seniority rights, (iii) negotiate with the UAW over the terms of any successor collective bargaining agreement upon the expiration of the UAW Collective Bargaining Agreement and upon timely

demand by the UAW, (iv) with the agreement of the UAW or otherwise as provided by Law and to the extent necessary, adopt or assume or replace, effective as of the Closing Date, employee benefit plans, policies, programs, agreements and arrangements specified in or covered by the UAW Collective Bargaining Agreement as required to be provided to the Transferred Employees covered by the UAW Collective Bargaining Agreement, and (v) otherwise abide by all terms and conditions of the UAW Collective Bargaining Agreement. For the avoidance of doubt, the provisions of this **Section 6.17(f)** are not intended to (A) give, and shall not be construed as giving, the UAW or any Transferred Employee any enhanced or additional rights or (B) otherwise restrict the rights that Purchaser and its Affiliates have, under the terms of the UAW Collective Bargaining Agreement.

(g) *UAW Retiree Settlement Agreement.* Prior to the Closing, Purchaser and the UAW shall have entered into the UAW Retiree Settlement Agreement.

(h) *Assumption of Existing Internal VEBA*. Purchaser or one of its Affiliates shall, effective as of the Closing Date, assume from Sellers the sponsorship of the voluntary employees' beneficiary association trust between Sellers and State Street Bank and Trust Company dated as of December 17, 1997, that is funded and maintained by Sellers ("Existing Internal VEBA") and, in connection therewith, Purchaser shall, or shall cause one of its Affiliates to, (i) succeed to all of the rights, title and interest (including the rights of Sellers, if any) as plan sponsor, plan administrator or employer) under the Existing Internal VEBA, (ii) assume any responsibility or Liability relating to the Existing Internal VEBA and each Contract established thereunder or relating thereto, and (iii) to operate the Existing Internal VEBA in accordance with, and to otherwise comply with the Purchaser's obligations under, the New UAW Retiree Settlement Agreement between Purchaser and the UAW, effective as of the Closing and subject to approval by a court having jurisdiction over this matter, including the obligation to direct the trustee of the Existing Internal VEBA to transfer the UAW's share of assets in the Existing Internal VEBA to the New VEBA. The Parties shall cooperate in the execution of any documents, the adoption of any corporate resolutions or the taking of any other reasonable actions to effectuate such succession of the settlor rights, title, and interest with respect to the Existing Internal VEBA. For avoidance of doubt, Purchaser shall not assume any Liabilities relating to the Existing Internal VEBA except with respect to such Contracts set forth in Section 6.17(h) of the Sellers' Disclosure Schedule.

(i) *Wage and Tax Reporting.* Sellers and Purchaser agree to apply, and cause their Affiliates to apply, the standard procedure for successor employers set forth in Revenue Procedure 2004-53 for wage and employment Tax reporting.

(j) *Non-solicitation*. Sellers shall not, for a period of two (2) years from the Closing Date, without Purchaser's written consent, solicit, offer employment to or hire any Transferred Employee.

(k) *Cooperation*. Purchaser and Sellers shall provide each other with such records and information as may be reasonably necessary, appropriate and permitted under applicable Law to carry out their obligations under this **Section 6.17**; provided, that all

records, information systems data bases, computer programs, data rooms and data related to any Assumed Plan or Liabilities of such, assumed by Purchaser, shall be transferred to Purchaser.

(l) *Union Notifications.* Purchaser and Sellers shall reasonably cooperate with each other in connection with any notification required by Law to, or any required consultation with, or the provision of documents and information to, the employees, employee representatives, the UAW and relevant Governmental Authorities and governmental officials concerning the transactions contemplated by this Agreement, including any notice to any of Sellers' retired Employees represented by the UAW, describing the transactions contemplated herein.

(m) *Union-Represented Employees (Non-UAW).*

(i) Effective as of the Closing Date, Purchaser or one of its Affiliates shall assume the collective bargaining agreements, as amended, set forth on Section 6.17(m)(i) of the Sellers' Disclosure Schedule (collectively, the "Non-UAW Collective Bargaining Agreements") and make offers of employment to each current employee of Parent who is covered by them in accordance with the applicable terms and conditions of such Non-UAW Collective Bargaining Agreements, such assumption and offers conditioned upon (A) the non-UAW represented employees' ratification of the amendments thereto (including termination of the application of the Supplemental Agreements Covering Health Care Program to retirees and the reduction to retiree life insurance coverage) and (B) Bankruptcy Court approval of Settlement Agreements between Purchaser and such Unions and Proposed Memorandum of Understanding Regarding Retiree Health Care and Life Insurance between Sellers and such Unions, as identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule and satisfaction of all conditions stated therein. Each such non-UAW hourly employee on layoff status, leave status or with recall rights as of the Closing Date shall continue in such status and/or retain such rights after the Closing in the Ordinary Course of Business, subject to the terms of the applicable Non-UAW Collective Bargaining Agreement. Other than as set forth in this **Section 6.17(m)**, no non-UAW collective bargaining agreement shall be assumed by Purchaser.

(ii) Section 6.17(m)(ii) of the Sellers' Disclosure Schedule sets forth agreements relating to post-retirement health care and life insurance coverage for non-UAW retired employees (the "Non-UAW Settlement Agreements"), including those agreements covering retirees who once belonged to Unions that no longer have any active employees at Sellers. Conditioned on both the approval of the Bankruptcy Court and the non-UAW represented employees' ratification of the amendments to the applicable Non-UAW Collective Bargaining Agreement providing for such coverage as described in **Section 6.17(m)(i)** above, Purchaser or one of its Affiliates shall assume and enter into the agreements identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule. Except as set forth in those agreements identified on Section 6.17(m)(i) and Section 6.17(m)(ii) of the Sellers' Disclosure Schedule, Purchaser shall not assume any Liability to provide

post-retirement health care or life insurance coverage for current or future hourly non-UAW retirees.

(iii) Other than as expressly set forth in this **Section 6.17(m)**, Purchaser assumes no Employment-Related Obligations for non-UAW hourly Employees. For the avoidance of doubt, (A) the provisions of **Section 6.17(f)** shall not apply to this **Section 6.17(m)** and (B) the provisions of this **Section 6.17(m)** are not intended to (y) give, and shall not be construed as giving, any non-UAW Union or the covered employee or retiree of any Non-UAW Collective Bargaining Agreement any enhanced or additional rights or (z) otherwise restrict the rights that Purchaser and its Affiliates have under the terms of the Non-UAW Collective Bargaining Agreements identified on Section 6.17(m)(i) of the Sellers' Disclosure Schedule.

Section 6.18 TARP. From and after the date hereof and until such time as all amounts under the UST Credit Facilities have been paid in full, forgiven or otherwise extinguished or such longer period as may be required by Law, subject to any applicable Order of the Bankruptcy Court, each of Sellers and Purchaser shall, and shall cause each of their respective Subsidiaries to, take all necessary action to ensure that it complies in all material respects with TARP or any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor prior to the Closing.

Section 6.19 Guarantees; Letters of Credit. Purchaser shall use its reasonable best efforts to cause Purchaser or one or more of its Subsidiaries to be substituted in all respects for each Seller and Excluded Entity, effective as of the Closing Date, in respect of all Liabilities of each Seller and Excluded Entity under each of the guarantees, letters of credit, letters of comfort, bid bonds and performance bonds (a) obtained by any Seller or Excluded Entity for the benefit of the business of Sellers and their Subsidiaries and (b) which is assumed by Purchaser as an Assumed Liability. As a result of such substitution, each Seller and Excluded Entity shall be released of its obligations of, and shall have no Liability following the Closing from, or in connection with any such guarantees, letters of credit, letters of comfort, bid bonds and performance bonds.

Section 6.20 Customs Duties. Purchaser shall reimburse Sellers for all customs-related duties, fees and associated costs incurred by Sellers on behalf of Purchaser with respect to periods following the Closing, including all such duties, fees and costs incurred in connection with co-loaded containers that clear customs intentionally or unintentionally under any Seller's importer or exporter identification numbers and bonds or guarantees with respect to periods following the Closing.

Section 6.21 Termination of Intellectual Property Rights. Each Seller agrees that any rights of any Seller, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests and including transfers resulting from this **Section 6.21**), whether owned or licensed, shall terminate as of the Closing. Before and after the Closing, each Seller agrees to use its reasonable best efforts to cause the Retained Subsidiaries to do the following, but only to the extent that such Seller can do so

without incurring any Liabilities to such Retained Subsidiaries or their equity owners or creditors as a result thereof: (a) enter into a written Contract with Purchaser that expressly terminates any rights of such Retained Subsidiaries, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests), whether owned or licensed; and (b) assign to Purchaser or its designee(s): (i) all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks, in each case, that are owned by such Retained Subsidiaries and that contain or are confusingly similar with (whether in whole or in part) any of the Trademarks; and (ii) all other intellectual property owned by such Retained Subsidiaries. Nothing in this **Section 6.21** shall preserve any rights of Sellers or the Retained Subsidiaries, or any third parties, that are otherwise terminated or extinguished pursuant to this Agreement or applicable Law, and nothing in this **Section 6.21** shall create any rights of Sellers or the Retained Subsidiaries, or any third parties, that do not already exist as of the date hereof. Notwithstanding anything to the contrary in this **Section 6.21**, Sellers may enter into (and may cause or permit any of the Purchased Subsidiaries to enter into) any of the transactions contemplated by Section 6.2 of the Sellers' Disclosure Schedule.

Section 6.22 Trademarks.

(a) At or before the Closing (i) Parent shall take any and all actions that are reasonably necessary to change the corporate name of Parent to a new name that bears no resemblance to Parent's present corporate name and that does not contain, and is not confusingly similar with, any of the Trademarks; and (ii) to the extent that the corporate name of any Seller (other than Parent) or any Retained Subsidiary resembles Parent's present corporate name or contains or is confusingly similar with any of the Trademarks, Sellers (including Parent) shall take any and all actions that are reasonably necessary to change such corporate names to new names that bear no resemblance to Parent's present corporate name, and that do not contain and are not confusingly similar with any of the Trademarks.

(b) As promptly as practicable following the Closing, but in no event later than ninety (90) days after the Closing (except as set forth in this **Section 6.22(b)**), Sellers shall cease, and shall cause the Retained Subsidiaries to cease, using the Trademarks in any form, whether by removing, permanently obliterating, covering, or otherwise eliminating all Trademarks that appear on any of their assets, including all signs, promotional or advertising literature, labels, stationery, business cards, office forms and packaging materials. During such time period, Sellers and the Retained Subsidiaries may continue to use Trademarks in a manner consistent with their usage of the Trademarks as of immediately prior to the Closing, but only to the extent reasonably necessary for them to continue their operations as contemplated by the Parties as of the

Closing. If requested by Purchaser within a reasonable time after the Closing, Sellers and Retained Subsidiaries shall enter into a written agreement that specifies quality control of such Trademarks and their underlying goods and services. For signs and the like that exist as of the Closing on the Excluded Real Property, if it is not reasonably practicable for Sellers or the Retained Subsidiaries to remove, permanently obliterate, cover or otherwise eliminate the Trademarks from such signs and the like within the time period specified above, then Sellers and the Retained Subsidiaries shall do so as soon as practicable following such time period, but in no event later than one-hundred eighty (180) days following the Closing.

(c) From and after the date of this Agreement and, until the earlier of the Closing or termination of this Agreement, each Seller shall use its reasonable best efforts to protect and maintain the Intellectual Property owned by Sellers that is material to the conduct of its business in a manner that is consistent with the value of such Intellectual Property.

(d) At or prior to the Closing, Sellers shall provide a true, correct and complete list setting forth all worldwide patents, patent applications, trademark registrations and applications and copyright registrations and applications included in the Intellectual Property owned by Sellers.

Section 6.23 Preservation of Records. The Parties shall preserve and keep all books and records that they own immediately after the Closing relating to the Purchased Assets, the Assumed Liabilities and Sellers' operation of the business related thereto prior to the Closing for a period of six (6) years following the Closing Date or for such longer period as may be required by applicable Law, unless disposed of in good faith pursuant to a document retention policy. During such retention period, duly authorized Representatives of a Party shall, upon reasonable notice, have reasonable access during normal business hours to examine, inspect and copy such books and records held by the other Parties for any proper purpose, except as may be prohibited by Law or by the terms of any Contract (including any confidentiality agreement); provided that to the extent that disclosing any such information would reasonably be expected to constitute a waiver of attorney-client, work product or other legal privilege with respect thereto, the Parties shall take all reasonable best efforts to permit such disclosure without the waiver of any such privilege, including entering into an appropriate joint defense agreement in connection with affording access to such information. The access provided pursuant to this **Section 6.23** shall be subject to such additional confidentiality provisions as the disclosing Party may reasonably deem necessary.

Section 6.24 Confidentiality. During the Confidentiality Period, Sellers and their Affiliates shall treat all trade secrets and all other proprietary, legally privileged or sensitive information related to the Transferred Entities, the Purchased Assets and/or the Assumed Liabilities (collectively, the "Confidential Information"), whether furnished before or after the Closing, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it is or was furnished, as confidential, preserve the confidentiality thereof, not use or disclose to any Person such Confidential Information and instruct their Representatives who have had access to such information to keep confidential such Confidential Information. The "Confidentiality Period"

shall be a period commencing on the date of the Original Agreement and (a) with respect to a trade secret, continuing for as long as it remains a trade secret and (b) for all other Confidential Information, ending four (4) years from the Closing Date. Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Sellers, any of their Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed, including any applicable requirements of the SEC or any other Governmental Authority responsible for securities Law regulation and compliance or any stock market or stock exchange on which any Seller's securities are listed.

Section 6.25 Privacy Policies. At or prior to the Closing, Purchaser shall, or shall cause its Subsidiaries to, establish Privacy Policies that are substantially similar to the Privacy Policies of Parent and the Purchased Subsidiaries as of immediately prior to the Closing, and Purchaser or its Affiliates, as applicable, shall honor all "opt-out" requests or preferences made by individuals in accordance with the Privacy Policies of Parent and the Purchased Subsidiaries and applicable Law; provided that such Privacy Policies and any related "opt-out" requests or preferences are delivered or otherwise made available to Purchaser prior to the Closing, to the extent not publicly available.

Section 6.26 Supplements to Sellers' Disclosure Schedule. At any time and from time to time prior to the Closing, Sellers shall have the right to supplement, modify or update Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule (a) to reflect changes and developments that have arisen after the date of the Original Agreement and that, if they existed prior to the date of the Original Agreement, would have been required to be set forth on such Sellers' Disclosure Schedule or (b) as may be necessary to correct any disclosures contained in such Sellers' Disclosure Schedule or in any representation and warranty of Sellers that has been rendered inaccurate by such changes or developments. No supplement, modification or amendment to Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule shall without the prior written consent of Purchaser, (i) cure any inaccuracy of any representation and warranty made in this Agreement by Sellers or (ii) give rise to Purchaser's right to terminate this Agreement unless and until this Agreement shall be terminable by Purchaser in accordance with **Section 8.1(f)**.

Section 6.27 Real Property Matters.

(a) Sellers and Purchaser acknowledge that certain real properties (the "Subdivision Properties") may need to be subdivided or otherwise legally partitioned in accordance with applicable Law (a "Required Subdivision") so as to permit the affected Owned Real Property to be conveyed to Purchaser separate and apart from adjacent Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule contains a list of the Subdivision Properties that was determined based on the current list of Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule may be updated at any time prior to the Closing to either (i) add additional Subdivision Properties or (ii) remove any Subdivision Properties, which have been determined to not require a Required Subdivision or for which a Required Subdivision has been obtained. Purchaser shall pay for all costs incurred to complete all Required Subdivisions. Sellers shall cooperate in good faith with Purchaser in connection with the completion with all Required

Subdivisions, including executing all required applications or other similar documents with Governmental Authorities. To the extent that any Required Subdivision for a Subdivision Property is not completed prior to Closing, then at Closing, Sellers shall lease to Purchaser only that portion of such Subdivision Property that constitutes Owned Real Property pursuant to the Master Lease Agreement (Subdivision Properties) substantially in the form attached hereto as **Exhibit L** (the "Subdivision Master Lease"). Upon completion of a Required Subdivision affecting an Owned Real Property that is subject to the Subdivision Master Lease, the Subdivision Master Lease shall be terminated as to such Owned Real Property and such Owned Real Property shall be conveyed to Purchaser by Quitclaim Deed for One Dollar ($1.00) in stated consideration.

(b) Sellers and Purchaser acknowledge that the Saginaw Nodular Iron facility in Saginaw, Michigan (the "Saginaw Nodular Iron Land") contains a wastewater treatment facility (the "Existing Saginaw Wastewater Facility") and a landfill (the "Saginaw Landfill") that currently serve the Owned Real Property commonly known as the GMPT - Saginaw Metal Casting facility (the "Saginaw Metal Casting Land"). The Saginaw Nodular Iron Land has been designated as an Excluded Real Property under Section 2.2(b)(v) of the Sellers' Disclosure Schedule. At the Closing (or within sixty (60) days after the Closing with respect to the Saginaw Landfill), Sellers shall enter into one or more service agreements with one or more third party contractors (collectively, the "Saginaw Service Contracts") to operate the Existing Saginaw Wastewater Facility and the Saginaw Landfill for the benefit of the Saginaw Metal Casting Land. The terms and conditions of the Saginaw Service Contracts shall be mutually acceptable to Purchaser and Sellers; provided that the term of each Saginaw Service Contract shall not extend beyond December 31, 2012, and Purchaser shall have the right to terminate any Saginaw Service Contract upon prior written notice of not less than forty-five (45) days. At any time during the term of the Saginaw Service Contracts, Purchaser may elect to purchase the Existing Saginaw Wastewater Facility, the Saginaw Landfill, or both, for One Dollar ($1.00) in stated consideration; provided that (i) Purchaser shall pay all costs and fees related to such purchase, including the costs of completing any Required Subdivision necessary to effectuate the terms of this **Section 6.27(b)**, (ii) Sellers shall convey title to the Existing Saginaw Wastewater Facility, the Saginaw Landfill and/or such other portion of the Saginaw Nodular Iron Land as is required by Purchaser to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill, including lagoons, but not any other portion of the Saginaw Nodular Iron Land, to Purchaser by quitclaim deed and (iii) Sellers shall grant Purchaser such easements for utilities over the portion of the Saginaw Nodular Iron Land retained by Sellers as may be required to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill.

(c) Sellers and Purchaser acknowledge that access to certain Excluded Real Property owned by Sellers or other real properties owned by Excluded Entities and certain Owned Real Property that may hereafter be designated as Excluded Real Property on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (a "Landlocked Parcel") is provided over land that is part of the Owned Real Property. To the extent that direct access to a public right-of-way is not obtained for any Landlocked Parcel by the Closing, then at Closing, Purchaser, in its sole election, shall for each such Landlocked Parcel either (i) grant an access easement over a mutually agreeable portion of the adjacent

Owned Real Property for the benefit of the Landlocked Parcel until such time as the Landlocked Parcel obtains direct access to the public right-of-way, pursuant to the terms of a mutually acceptable easement agreement, or (ii) convey to the owner of the affected Landlocked Parcel by quitclaim deed such portion of the adjacent Owned Real Property as is required to provide the Landlocked Parcel with direct access to a public right-of-way.

(d) At and after Closing, Sellers and Purchasers shall cooperate in good faith to investigate and resolve all issues reasonably related to or arising in connection with Shared Executory Contracts that involve the provision of water, water treatment, electricity, fuel, gas, telephone and other utilities to both Owned Real Property and Excluded Real Property.

(e) Parent shall use reasonable best efforts to cause the Willow Run Landlord to execute, within thirty (30) days after the Closing, or at such later date as may be mutually agreed upon, an amendment to the Willow Run Lease which extends the term of the Willow Run Lease until December 31, 2010 with three (3) one-month options to extend, all at the current rental rate under the Willow Run Lease (the "Willow Run Lease Amendment"). In the event that the Willow Run Lease Amendment is approved and executed by the Willow Run Landlord, then Purchaser shall designate the Willow Run Lease as an Assumable Executory Contract and Parent and Purchaser, or one of its designated Subsidiaries, shall enter into an assignment and assumption of the Willow Run Lease substantially in the form attached hereto as **Exhibit M** (the "Assignment and Assumption of Willow Run Lease").

Section 6.28 Equity Incentive Plans. Within a reasonable period of time following the Closing, Purchaser, through its board of directors, will adopt equity incentive plans to be maintained by Purchaser for the benefit of officers, directors, and employees of Purchaser that will provide the opportunity for equity incentive benefits for such persons ("Equity Incentive Plans").

Section 6.29 Purchase of Personal Property Subject to Executory Contracts. With respect to any Personal Property subject to an Executory Contract that is nominally an unexpired lease of Personal Property, if (a) such Contract is recharacterized by a Final Order of the Bankruptcy Court as a secured financing or (b) Purchaser, Sellers and the counterparty to such Contract agree, then Purchaser shall have the option to purchase such personal property by paying to the applicable Seller for the benefit of the counterparty to such Contract an amount equal to the amount, as applicable (i) of such counterparty's allowed secured Claim arising in connection with the recharacterization of such Contract as determined by such Order or (ii) agreed to by Purchaser, Sellers and such counterparty.

Section 6.30 Transfer of Riverfront Holdings, Inc. Equity Interests or Purchased Assets; Ren Cen Lease. Notwithstanding anything to the contrary set forth in this Agreement, in lieu of or in addition to the transfer of Sellers' Equity Interest in Riverfront Holdings, Inc., a Delaware corporation ("RHI"), Purchaser shall have the right at the Closing or at any time during the RHI Post-Closing Period, to require Sellers to cause RHI to transfer good and marketable title to, or a valid and enforceable right by Contract to use, all or any portion of the assets of RHI

to Purchaser. Purchaser shall, at its option, have the right to cause Sellers to postpone the transfer of Sellers' Equity Interest in RHI and/or title to the assets of RHI to Purchaser up until the earlier of (i) January 31, 2010 and (ii) the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization (the "RHI Post-Closing Period"); provided, however, that (a) Purchaser may cause Sellers to effectuate said transfers at any time and from time to time during the RHI-Post Closing Period upon at least five (5) Business Days' prior written notice to Sellers and (b) at the closing, RHI, as landlord, and Purchaser, or one of its designated Subsidiaries, as tenant, shall enter into a lease agreement substantially in the form attached hereto as **Exhibit N** (the "Ren Cen Lease") for the premises described therein.

Section 6.31 Delphi Agreements. Notwithstanding anything to the contrary in this Agreement, including **Section 6.6**:

(a) Subject to and simultaneously with the consummation of the transactions contemplated by the MDA or of an Acceptable Alternative Transaction (in each case, as defined in the Delphi Motion), (i) the Delphi Transaction Agreements shall, effective immediately upon and simultaneously with such consummation, (A) be deemed to be Assumable Executory Contracts and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the date of such consummation.

(b) The LSA Agreement shall, effective at the Closing, (i) be deemed to be an Assumable Executory Contract and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the Closing Date. To the extent that any such agreement is not an Executory Contract, such agreement shall be deemed to be a Purchased Contract.

Section 6.32 GM Strasbourg S.A. Restructuring. The Parties acknowledge and agree that General Motors International Holdings, Inc., a direct Subsidiary of Parent and the direct parent of GM Strasbourg S.A., may, prior to the Closing, dividend its Equity Interest in GM Strasbourg S.A. to Parent, such that following such dividend, GM Strasbourg S.A. will become a wholly-owned direct Subsidiary of Parent. Notwithstanding anything to the contrary in this Agreement, the Parties further acknowledge and agree that following the consummation of such restructuring at any time prior to the Closing, GM Strasbourg S.A. shall automatically, without further action by the Parties, be designated as an Excluded Entity and deemed to be set forth on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule.

Section 6.33 Holding Company Reorganization. The Parties agree that Purchaser may, with the prior written consent of Sellers, reorganize prior to the Closing such that Purchaser may become a direct or indirect, wholly-owned Subsidiary of Holding Company on such terms and in such manner as is reasonably acceptable to Sellers, and Purchaser may assign all or a portion of its rights and obligations under this Agreement to Holding Company (or one or more newly formed, direct or indirect, wholly-owned Subsidiaries of Holding Company) in accordance with **Section 9.5**. In connection with any restructuring effected pursuant to this **Section 6.33**, the Parties further agree that, notwithstanding anything to the contrary in this Agreement (a) Parent shall receive securities of Holding Company with the same rights and

privileges, and in the same proportions, as the Parent Shares and the Parent Warrants, in each case, in lieu of the Parent Shares and Parent Warrants, as Purchase Price hereunder, (b) Canada, New VEBA and Sponsor shall receive securities of Holding Company with the same rights and privileges, and in the same proportions, as the Canada Shares, VEBA Shares, VEBA Warrant and Sponsor Shares, as applicable, in each case, in connection with the Closing and (c) New VEBA shall receive the VEBA Note issued by the same entity that becomes the obligor on the Purchaser Assumed Debt.

Section 6.34 Transfer of Promark Global Advisors Limited and Promark Investment Trustees Limited Equity Interests. Notwithstanding anything to the contrary set forth in this Agreement, in the event approval by the Financial Services Authority (the "FSA Approval") of the transfer of Sellers' Equity Interests in Promark Global Advisors Limited and Promark Investments Trustees Limited (together, the "Promark UK Subsidiaries") has not been obtained as of the Closing Date, Sellers shall, at their option, have the right to postpone the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries until such time as the FSA Approval is obtained. If the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries is postponed pursuant to this **Section 6.34**, then (a) Sellers and Purchaser shall effectuate the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries no later than five (5) Business Days following the date that the FSA Approval is obtained and (b) Sellers shall enter into a transitional services agreement with Promark Global Advisors, Inc. in the form provided by Promark Global Advisors, Inc., which shall include terms and provisions regarding: (i) certain transitional services to be provided by Promark Global Advisors, Inc. to the Promark UK Subsidiaries, (ii) the continued availability of director and officer liability insurance for directors and officers of the Promark UK Subsidiaries and (iii) certain actions on the part of the Promark UK Subsidiaries to require the prior written consent of Promark Global Advisors, Inc., including changes to employee benefits or compensation, declaration of dividends, material financial transactions, disposition of material assets, entry into material agreements, changes to existing business plans, changes in management and the boards of directors of the Promark UK Subsidiaries and other similar actions.

Section 6.35 Transfer of Equity Interests in Certain Subsidiaries. Notwithstanding anything to the contrary set forth in this Agreement, the Parties may mutually agree to postpone the transfer of Sellers' Equity Interests in those Transferred Entities as are mutually agreed upon by the Parties ("Delayed Closing Entities") to a date following the Closing.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver (to the extent permitted by applicable Law), prior to or at the Closing, of each of the following conditions:

(a) The Bankruptcy Court shall have entered the Sale Approval Order and the Sale Procedures Order on terms acceptable to the Parties and reasonably acceptable to the UAW, and each shall be a Final Order and shall not have been vacated, stayed or

reversed; provided, however, that the conditions contained in this **Section 7.1(a)** shall be satisfied notwithstanding the pendency of an appeal if the effectiveness of the Sale Approval Order has not been stayed.

(b) No Order or Law of a United States Governmental Authority shall be in effect that declares this Agreement invalid or unenforceable or that restrains, enjoins or otherwise prohibits the consummation of the transactions contemplated by this Agreement.

(c) Sponsor shall have delivered, or caused to be delivered to Sellers and Purchaser an equity registration rights agreement, substantially in the form attached hereto as **Exhibit O** (the "Equity Registration Rights Agreement"), duly executed by Sponsor.

(d) Canada shall have delivered, or caused to be delivered to Sellers and Purchaser the Equity Registration Rights Agreement, duly executed by Canada.

(e) The Canadian Debt Contribution shall have been consummated.

(f) The New VEBA shall have delivered, or caused to be delivered to Sellers and Purchaser, the Equity Registration Rights Agreement, duly executed by the New VEBA.

(g) Purchaser shall have received (i) consents from Governmental Authorities, (ii) Permits and (iii) consents from non-Governmental Authorities, in each case with respect to the transactions contemplated by this Agreement and the ownership and operation of the Purchased Assets and Assumed Liabilities by Purchaser from and after the Closing, sufficient in the aggregate to permit Purchaser to own and operate the Purchased Assets and Assumed Liabilities from and after the Closing in substantially the same manner as owned and operated by Sellers immediately prior to the Closing (after giving effect to (A) the implementation of the Viability Plans; (B) Parent's announced shutdown, which began in May 2009; and (C) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent).

(h) Sellers shall have executed and delivered definitive financing agreements restructuring the Wind Down Facility in accordance with the provisions of **Section 6.9(b)**.

Section 7.2 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Purchaser waive the conditions contained in **Section 7.2(d)** or **Section 7.2(e)**:

(a) Each of the representations and warranties of Sellers contained in **ARTICLE IV** of this Agreement shall be true and correct (disregarding for the purposes of such determination any qualification as to materiality or Material Adverse Effect) as of

the Closing Date as if made on the Closing Date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Material Adverse Effect.

(b) Sellers shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by Sellers prior to or at the Closing.

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser:

(i) a certificate executed as of the Closing Date by a duly authorized representative of Sellers, on behalf of Sellers and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.2(a)** and **Section 7.2(b)** have been satisfied;

(ii) the Equity Registration Rights Agreement, duly executed by Parent;

(iii) stock certificates or membership interest certificates, if any, evidencing the Transferred Equity Interests (other than in respect of the Equity Interests held by Sellers in RHI, Promark Global Advisors Limited, Promark Investments Trustees Limited and the Delayed Closing Entities, which the Parties agree may be transferred following the Closing in accordance with **Section 6.30**, **Section 6.34** and **Section 6.35**), duly endorsed in blank or accompanied by stock powers (or similar documentation) duly endorsed in blank, in proper form for transfer to Purchaser, including any required stamps affixed thereto;

(iv) an omnibus bill of sale, substantially in the form attached hereto as **Exhibit P** (the "Bill of Sale"), together with transfer tax declarations and all other instruments of conveyance that are necessary to effect transfer to Purchaser of title to the Purchased Assets, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(v) an omnibus assignment and assumption agreement, substantially in the form attached hereto as **Exhibit Q** (the "Assignment and Assumption Agreement"), together with all other instruments of assignment and assumption that are necessary to transfer the Purchased Contracts and Assumed Liabilities to Purchaser, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(vi) a novation agreement, substantially in the form attached hereto as **Exhibit R** (the "Novation Agreement"), duly executed by Sellers and the appropriate United States Governmental Authorities;

(vii) a government related subcontract agreement, substantially in the form attached hereto as **Exhibit S** (the "Government Related Subcontract Agreement"), duly executed by Sellers;

(viii) an omnibus intellectual property assignment agreement, substantially in the form attached hereto as **Exhibit T** (the "Intellectual Property Assignment Agreement"), duly executed by Sellers;

(ix) a transition services agreement, substantially in the form attached hereto as **Exhibit U** (the "Transition Services Agreement"), duly executed by Sellers;

(x) all quitclaim deeds or deeds without warranty (or equivalents for those parcels of Owned Real Property located in jurisdictions outside of the United States), in customary form, subject only to Permitted Encumbrances, conveying the Owned Real Property to Purchaser (the "Quitclaim Deeds"), duly executed by the appropriate Seller;

(xi) all required Transfer Tax or sales disclosure forms relating to the Transferred Real Property (the "Transfer Tax Forms"), duly executed by the appropriate Seller;

(xii) an assignment and assumption of the leases and subleases underlying the Leased Real Property, in substantially the form attached hereto as **Exhibit V** (the "Assignment and Assumption of Real Property Leases"), together with such other instruments of assignment and assumption that are necessary to transfer the leases and subleases underlying the Leased Real Property located in jurisdictions outside of the United States, each duly executed by Sellers; provided, however, that if it is required for the assumption and assignment of any lease or sublease underlying a Leased Real Property that a separate assignment and assumption for such lease or sublease be executed, then a separate assignment and assumption of such lease or sublease shall be executed in a form substantially similar to **Exhibit V** or as otherwise required to assume or assign such Leased Real Property;

(xiii) an assignment and assumption of the lease in respect of the premises located at 2485 Second Avenue, New York, New York, substantially in the form attached hereto as **Exhibit W** (the "Assignment and Assumption of Harlem Lease"), duly executed by Harlem;

(xiv) an omnibus lease agreement in respect of the lease of certain portions of the Excluded Real Property that is owned real property, substantially in the form attached hereto as **Exhibit X** (the "Master Lease Agreement"), duly executed by Parent;

(xv) *[Reserved]*;

(xvi) the Saginaw Service Contracts, if required, duly executed by the appropriate Seller;

(xvii) any easement agreements required under **Section 6.27(c)**, duly executed by the appropriate Seller;

(xviii) the Subdivision Master Lease, if required, duly executed by the appropriate Sellers;

(xix) a certificate of an officer of each Seller (A) certifying that attached to such certificate are true and complete copies of (1) such Seller's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of such Seller, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which such Seller is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(e)**, and (B) certifying as to the incumbency of the officer(s) of such Seller executing this Agreement and the Ancillary Agreements to which such Seller is a party;

(xx) a certificate in compliance with Treas. Reg. §1.1445-2(b)(2) that each Seller is not a foreign person as defined under Section 897 of the Tax Code;

(xxi) a certificate of good standing for each Seller from the Secretary of State of the State of Delaware;

(xxii) their written agreement to treat the Relevant Transactions and the other transactions contemplated by this Agreement in accordance with Purchaser's determination in **Section 6.16**;

(xxiii) payoff letters and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements), each in a form reasonably satisfactory to the Parties and duly executed by the holders of the secured Indebtedness; and

(xxiv) all books and records of Sellers described in **Section 2.2(a)(xiv)**.

(d) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by the applicable Sellers and assigned to Purchaser, and shall be in full force and effect.

(e) The UAW Retiree Settlement Agreement shall have been executed and delivered by the UAW and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

(f) The Canadian Operations Continuation Agreement shall have been executed and delivered by the parties thereto in the form previously distributed among them.

Section 7.3 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Sellers waive the conditions contained in **Section 7.3(h)** or **Section 7.3(i)**:

(a) Each of the representations and warranties of Purchaser contained in **ARTICLE V** of this Agreement shall be true and correct (disregarding for the purpose of such determination any qualification as to materiality or Purchaser Material Adverse Effect) as of the Closing Date as if made on such date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Purchaser Material Adverse Effect.

(b) Purchaser shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers:

(i) Parent Warrant A (including the related warrant agreement), duly executed by Purchaser;

(ii) Parent Warrant B (including the related warrant agreement), duly executed by Purchaser;

(iii) a certificate executed as of the Closing Date by a duly authorized representative of Purchaser, on behalf of Purchaser and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.3(a)** and **Section 7.3(b)** are satisfied;

(iv) stock certificates evidencing the Parent Shares, duly endorsed in blank or accompanied by stock powers duly endorsed in blank, in proper form for transfer, including any required stamps affixed thereto;

(v) the Equity Registration Rights Agreement, duly executed by Purchaser;

(vi) the Bill of Sale, together with all other documents described in **Section 7.2(c)(iv)**, each duly executed by Purchaser or its designated Subsidiaries;

(vii) the Assignment and Assumption Agreement, together with all other documents described in **Section 7.2(c)(v)**, each duly executed by Purchaser or its designated Subsidiaries;

(viii) the Novation Agreement, duly executed by Purchaser or its designated Subsidiaries;

(ix) the Government Related Subcontract Agreement, duly executed by Purchaser or its designated Subsidiary;

(x) the Intellectual Property Assignment Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xi) the Transition Services Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xii) the Transfer Tax Forms, duly executed by Purchaser or its designated Subsidiaries, to the extent required;

(xiii) the Assignment and Assumption of Real Property Leases, together with all other documents described in **Section 7.2(c)(xii)**, each duly executed by Purchaser or its designated Subsidiaries;

(xiv) the Assignment and Assumption of Harlem Lease, duly executed by Purchaser or its designated Subsidiaries;

(xv) the Master Lease Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xvi) *[Reserved]*;

(xvii) the Subdivision Master Lease, if required, duly executed by Purchaser or its designated Subsidiaries;

(xviii) any easement agreements required under **Section 6.27(c)**, duly executed by Purchaser or its designated Subsidiaries;

(xix) a certificate of a duly authorized representative of Purchaser (A) certifying that attached to such certificate are true and complete copies of (1) Purchaser's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of Purchaser, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Purchaser is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(g)**, and (B) certifying as to the incumbency of the officer(s) of Purchaser executing this Agreement and the Ancillary Agreements to which Purchaser is a party; and

(xx) a certificate of good standing for Purchaser from the Secretary of State of the State of Delaware.

(d) *[Reserved]*

(e) Purchaser shall have filed a certificate of designation for the Preferred Stock, substantially in the form attached hereto as **Exhibit Y**, with the Secretary of State of the State of Delaware.

(f) Purchaser shall have offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (iii) transferred to Sellers the UST Warrant and (iv) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(g) Purchaser shall have delivered, or caused to be delivered, to Canada, Sponsor and/or the New VEBA, as applicable:

(i) certificates representing the Canada Shares, the Sponsor Shares and the VEBA Shares in accordance with the applicable equity subscription agreements in effect on the date hereof;

(ii) the Equity Registration Rights Agreement, duly executed by Purchaser;

(iii) the VEBA Warrant (including the related warrant agreement), duly executed by Purchaser; and

(iv) a note, in form and substance consistent with the terms set forth on **Exhibit Z** attached hereto, to the New VEBA (the "VEBA Note").

(h) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by Purchaser, and shall be in full force and effect.

(i) The UAW Retiree Settlement Agreement shall have been executed and delivered, shall be in full force and effect, and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

ARTICLE VIII
TERMINATION

Section 8.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to the Closing Date as follows:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by either Sellers or Purchaser, if (i) the Closing shall not have occurred on or before August 15, 2009, or such later date as the Parties may agree in writing, such date not to be later than September 15, 2009 (as extended, the "End Date"), and (ii) the Party seeking to terminate this Agreement pursuant to this **Section 8.1(b)** shall not have breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the failure of the transactions contemplated hereby to close on or before such date;

(c) by either Sellers or Purchaser, if the Bankruptcy Court shall not have entered the Sale Approval Order by July 10, 2009;

(d) by either Sellers or Purchaser, if any court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued a Final Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement or the sale of a material portion of the Purchased Assets;

(e) by Sellers, if Purchaser shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, and such breach or failure to perform has not been cured by the End Date, provided that (i) Sellers shall have given Purchaser written notice, delivered at least thirty (30) days prior to such termination, stating Sellers' intention to terminate this Agreement pursuant to this **Section 8.1(e)** and the basis for such termination and (ii) Sellers shall not have the right to terminate this Agreement pursuant to this **Section 8.1(e)** if Sellers are then in material breach of any its representations, warranties, covenants or other agreements set forth herein;

(f) by Purchaser, if Sellers shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in **Section 7.2(a)** or **Section 7.2(b)** to be fulfilled, (ii) cannot be cured by the End Date, provided that (i) Purchaser shall have given Sellers written notice, delivered at least thirty (30) days prior to such termination, stating Purchaser's intention to terminate this Agreement pursuant to this **Section 8.1(f)** and the basis for such termination and (iii) Purchaser shall not have the right to terminate this Agreement pursuant to this **Section 8.1(f)** if Purchaser is then in material breach of any its representations, warranties, covenants or other agreements set forth herein; or

(g) by either Sellers or Purchaser, if the Bankruptcy Court shall have entered an Order approving an Alternative Transaction.

Section 8.2 Procedure and Effect of Termination.

(a) If this Agreement is terminated pursuant to **Section 8.1**, this Agreement shall become null and void and have no effect, and all obligations of the Parties hereunder shall terminate, except for those obligations of the Parties set forth this **Section 8.2** and **ARTICLE IX**, which shall remain in full force and effect; provided that nothing

herein shall relieve any Party from Liability for any material breach of any of its representations, warranties, covenants or other agreements set forth herein. If this Agreement is terminated as provided herein, all filings, applications and other submissions made pursuant to this Agreement shall, to the extent practicable, be withdrawn from the agency or other Person to which they were made.

(b) If this Agreement is terminated by Sellers or Purchaser pursuant to **Section 8.1(a)** through **Section 8.1(d)** or **Section 8.1(g)** or by Purchaser pursuant to **Section 8.1(f)**, Sellers, severally and not jointly, shall reimburse Purchaser for its reasonable, out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Purchaser in connection with this Agreement and the transactions contemplated hereby (the "Purchaser Expense Reimbursement"). The Purchaser Expense Reimbursement shall be paid as an administrative expense Claim of Sellers pursuant to Section 503(b)(1) of the Bankruptcy Code.

(c) Except as expressly provided for in this **Section 8.2**, any termination of this Agreement pursuant to **Section 8.1** shall be without Liability to Purchaser or Sellers, including any Liability by Sellers to Purchaser for any break-up fee, termination fee, expense reimbursement or other compensation as a result of a termination of this Agreement.

(d) If this Agreement is terminated for any reason, Purchaser shall, and shall cause each of its Affiliates and Representatives to, treat and hold as confidential all Confidential Information, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it was furnished. For purposes of this **Section 8.2(d)**, Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Purchaser, any of its Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Survival of Representations, Warranties, Covenants and Agreements and Consequences of Certain Breaches. The representations and warranties of the Parties contained in this Agreement shall be extinguished by and shall not survive the Closing, and no Claims may be asserted in respect of, and no Party shall have any Liability for any breach of, the representations and warranties. All covenants and agreements contained in this Agreement, including those covenants and agreements set forth in **ARTICLE II** and **ARTICLE VI**, shall survive the Closing indefinitely.

Section 9.2 Notices. Any notice, request, instruction, consent, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) upon delivery when personally delivered; (b) on the delivery date after having been sent by a nationally or internationally recognized overnight courier service (charges prepaid); (c) at the time received

when sent by registered or certified mail, return receipt requested, postage prepaid; or (d) at the time when confirmation of successful transmission is received (or the first Business Day following such receipt if the date of such receipt is not a Business Day) if sent by facsimile, in each case, to the recipient at the address or facsimile number, as applicable, indicated below:

If to any Seller:	General Motors Corporation 300 Renaissance Center Tower 300, 25th Floor, Room D55 M/C 482-C25-D81 Detroit, Michigan 48265-3000 Attn: General Counsel Tel.: 313-667-3450 Facsimile: 248-267-4584
With copies to:	Jenner & Block LLP 330 North Wabash Avenue Chicago, Illinois 60611-7603 Attn: Joseph P. Gromacki Michael T. Wolf Tel.: 312-222-9350 Facsimile: 312-527-0484 and Weil Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attn: Harvey R. Miller Stephen Karotkin Raymond Gietz Tel.: 212-310-8000 Facsimile: 212-310-8007
If to Purchaser:	NGMCO, Inc. c/o The United States Department of the Treasury 1500 Pennsylvania Avenue, NW Washington D.C. 20220 Attn: Chief Counsel Office of Financial Stability Facsimile: 202-927-9225

With a copy to: Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attn: John J. Rapisardi
R. Ronald Hopkinson
Tel.: 212-504-6000
Facsimile: 212-504-6666

provided, however, if any Party shall have designated a different addressee and/or contact information by notice in accordance with this **Section 9.2**, then to the last addressee as so designated.

Section 9.3 Fees and Expenses; No Right of Setoff. Except as otherwise provided in this Agreement, including **Section 8.2(b)**, Purchaser, on the one hand, and each Seller, on the other hand, shall bear its own fees, costs and expenses, including fees and disbursements of counsel, financial advisors, investment bankers, accountants and other agents and representatives, incurred in connection with the negotiation and execution of this Agreement and each Ancillary Agreement and the consummation of the transactions contemplated hereby and thereby. In furtherance of the foregoing, Purchaser shall be solely responsible for (a) all expenses incurred by it in connection with its due diligence review of Sellers and their respective businesses, including surveys, title work, title inspections, title searches, environmental testing or inspections, building inspections, Uniform Commercial Code lien and other searches and (b) any cost (including any filing fees) incurred by it in connection with notarization, registration or recording of this Agreement or an Ancillary Agreement required by applicable Law. No Party nor any of its Affiliates shall have any right of holdback or setoff or assert any Claim or defense with respect to any amounts that may be owed by such Party or its Affiliates to any other Party (or Parties) hereto or its or their Affiliates as a result of and with respect to any amount that may be owing to such Party or its Affiliates under this Agreement, any Ancillary Agreement or any other commercial arrangement entered into in between or among such Parties and/or their respective Affiliates.

Section 9.4 Bulk Sales Laws. Each Party hereto waives compliance by the other Parties with any applicable bulk sales Law.

Section 9.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations provided by this Agreement may be assigned or delegated by any Party (whether by operation of law or otherwise) without the prior written consent of the other Parties, and any such assignment or delegation without such prior written consent shall be null and void; provided, however, that, without the consent of Sellers, Purchaser may assign or direct the transfer on its behalf on or prior to the Closing of all, or any portion, of its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser; provided, further, that no such assignment or delegation shall relieve Purchaser of any of its obligations under this Agreement. Subject to the preceding sentence and except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 9.6 Amendment. This Agreement may not be amended, modified or supplemented except upon the execution and delivery of a written agreement executed by a duly authorized representative or officer of each of the Parties.

Section 9.7 Waiver. At any time prior to the Closing, each Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties; (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant hereto; or (c) waive compliance with any of the agreements or conditions contained herein (to the extent permitted by Law). Any such waiver or extension by a Party (i) shall be valid only if, and to the extent, set forth in a written instrument signed by a duly authorized representative or officer of the Party to be bound and (ii) shall not constitute, or be construed as, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement. The failure in any one or more instances of a Party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said Party of any breach of any of the terms, covenants or conditions of this Agreement shall not be construed as a subsequent waiver of, or estoppel with respect to, any other terms, covenants, conditions, rights or privileges, but the same will continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 9.8 Severability. Whenever possible, each term and provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law. If any term or provision of this Agreement, or the application thereof to any Person or any circumstance, is held to be illegal, invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be legal, valid and enforceable, the intent and purpose of such illegal, invalid or unenforceable provision and (b) the remainder of this Agreement or such term or provision and the application of such term or provision to other Persons or circumstances shall remain in full force and effect and shall not be affected by such illegality, invalidity or unenforceability, nor shall such invalidity or unenforceability affect the legality, validity or enforceability of such term or provision, or the application thereof, in any jurisdiction.

Section 9.9 Counterparts; Facsimiles. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

Section 9.10 Headings. The descriptive headings of the Articles, Sections and paragraphs of, and Schedules and Exhibits to, this Agreement, and the table of contents, table of Exhibits and table of Schedules contained in this Agreement, are included for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit, modify or affect any of the provisions hereof.

Section 9.11 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective permitted successors and

assigns; provided, that (a) for all purposes each of Sponsor, the New VEBA, and Canada shall be express third-party beneficiaries of this Agreement and (b) for purposes of **Section 2.2(a)(x)** and **(xvi)**, **Section 2.2(b)(vii)**, **Section 2.3(a)(x)**, **(xii)**, **(xiii)** and **(xv)**, **Section 2.3(b)(xv)**, **Section 4.6(b)**, **Section 4.10**, **Section 5.4(c)**, **Section 6.2(b)(x)**, **(xv)** and **(xvii)**, **Section 6.4(a)**, **Section 6.4(b)**, **Section 6.6(a)**, **(d)**, **(f)** and **(g)**, **Section 6.11(c)(i)** and **(vi)**, **Section 6.17**, **Section 7.1(a)** and **(f)**, **Section 7.2(d)** and **(e)** and **Section 7.3(g)**, **(h)** and **(i)**, the UAW shall be an express third-party beneficiary of this Agreement. Subject to the preceding sentence, nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to any Person, other than the Parties, their Affiliates and their respective permitted successors or assigns, any legal or equitable Claims, benefits, rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.12 Governing Law. The construction, interpretation and other matters arising out of or in connection with this Agreement (whether arising in contract, tort, equity or otherwise) shall in all respects be governed by and construed (a) to the extent applicable, in accordance with the Bankruptcy Code, and (b) to the extent the Bankruptcy Code is not applicable, in accordance with the Laws of the State of New York, without giving effect to rules governing the conflict of laws.

Section 9.13 Venue and Retention of Jurisdiction. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein); provided, however, that this **Section 9.13** shall not be applicable in the event the Bankruptcy Cases have closed, in which case the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein).

Section 9.14 Waiver of Jury Trial. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

Section 9.15 Risk of Loss. Prior to the Closing, all risk of loss, damage or destruction to all or any part of the Purchased Assets shall be borne exclusively by Sellers.

Section 9.16 Enforcement of Agreement. The Parties agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the

Parties shall, without the posting of a bond, be entitled, subject to a determination by a court of competent jurisdiction, to an injunction or injunctions to prevent any such failure of performance under, or breaches of, this Agreement, and to enforce specifically the terms and provisions hereof and thereof, this being in addition to all other remedies available at law or in equity, and each Party agrees that it will not oppose the granting of such relief on the basis that the requesting Party has an adequate remedy at law.

Section 9.17 Entire Agreement. This Agreement (together with the Ancillary Agreements, the Sellers' Disclosure Schedule and the Exhibits) contains the final, exclusive and entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the Parties with respect to the subject matter hereof and thereof. Neither this Agreement nor any Ancillary Agreement shall be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any Party with respect to the transactions contemplated hereby or thereby other than those expressly set forth herein or therein, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

Section 9.18 Publicity. Prior to the first public announcement of this Agreement and the transactions contemplated hereby, Sellers, on the one hand, and Purchaser, on the other hand, shall consult with each other regarding, and share with each other copies of, their respective communications plans, including draft press releases and related materials, with regard to such announcement. Neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party or Parties, as applicable, which approval shall not be unreasonably withheld, conditioned or delayed, unless, in the sole judgment of the Party intending to make such release, disclosure is otherwise required by applicable Law, or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Sellers list securities; provided, that the Party intending to make such release shall use reasonable best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party or Parties, as applicable, with respect to the text thereof; provided, further, that, notwithstanding anything to the contrary contained in this section, no Party shall be prohibited from publishing, disseminating or otherwise making public, without the prior written approval of the other Party or Parties, as applicable, any materials that are derived from or consistent with the materials included in the communications plan referred to above. In an effort to coordinate consistent communications, the Parties shall agree upon procedures relating to all press releases and public announcements concerning this Agreement and the transactions contemplated hereby.

Section 9.19 No Successor or Transferee Liability. Except where expressly prohibited under applicable Law or otherwise expressly ordered by the Bankruptcy Court, upon the Closing, neither Purchaser nor any of its Affiliates or stockholders shall be deemed to (a) be the successor of Sellers; (b) have, de facto, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) other than as set forth in this Agreement, be liable for any acts or omissions of Sellers in the conduct of Sellers' business or arising under or related to the Purchased Assets. Without limiting

the generality of the foregoing, and except as otherwise provided in this Agreement, neither Purchaser nor any of its Affiliates or stockholders shall be liable for any Claims against Sellers or any of their predecessors or Affiliates, and neither Purchaser nor any of its Affiliates or stockholders shall have any successor, transferee or vicarious Liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to Sellers' business or any obligations of Sellers arising prior to the Closing, except as provided in this Agreement, including Liabilities on account of any Taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Sellers' business prior to the Closing.

Section 9.20 Time Periods. Unless otherwise specified in this Agreement, an action required under this Agreement to be taken within a certain number of days or any other time period specified herein shall be taken within the applicable number of calendar days (and not Business Days); provided, however, that if the last day for taking such action falls on a day that is not a Business Day, the period during which such action may be taken shall be automatically extended to the next Business Day.

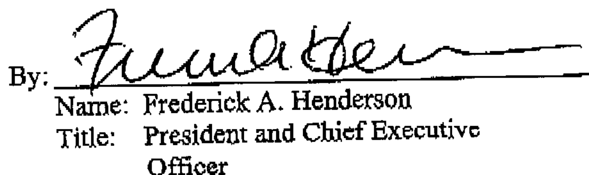
Section 9.21 Sellers' Disclosure Schedule. The representations and warranties of Sellers set forth in this Agreement are made and given subject to the disclosures contained in the Sellers' Disclosure Schedule. Inclusion of information in the Sellers' Disclosure Schedule shall not be construed as an admission that such information is material to the business, operations or condition of the business of Sellers, the Purchased Assets or the Assumed Liabilities, taken in part or as a whole, or as an admission of Liability of any Seller to any third party. The specific disclosures set forth in the Sellers' Disclosure Schedule have been organized to correspond to Section references in this Agreement to which the disclosure may be most likely to relate; provided, however, that any disclosure in the Sellers' Disclosure Schedule shall apply to, and shall be deemed to be disclosed for, any other Section of this Agreement to the extent the relevance of such disclosure to such other Section is reasonably apparent on its face.

Section 9.22 No Binding Effect. Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement shall (i) be binding on or create any obligation on the part of Sponsor, the United States Government or any branch, agency or political subdivision thereof (a "Sponsor Affiliate") or the Government of Canada, or any crown corporation, agency or department thereof (a "Canada Affiliate") or (ii) require Purchaser to initiate any Claim or other action against Sponsor or any Sponsor Affiliate or otherwise attempt to cause Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate to comply with or abide by the terms of this Agreement. No facts, materials or other information received or action taken by any Person who is an officer, director or agent of Purchaser by virtue of such Person's affiliation with or employment by Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate shall be attributed to Purchaser for purposes of this Agreement or shall form the basis of any claim against such Person in their individual capacity.

[Remainder of the page left intentionally blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: 
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: ______________________
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: ______________________
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: ______________________
Name: Michael Garrick
Title: President

NGMCO, INC.

By: ______________________
Name: Sadiq A. Malik
Title: Vice President and Treasurer

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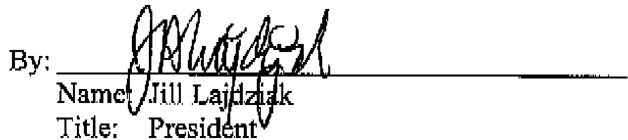
By: ______________________________

Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

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By: ______________________________
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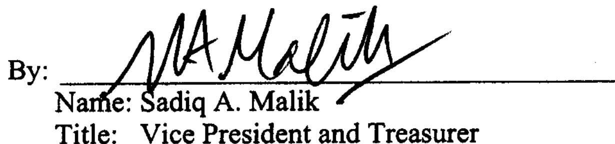
Title: President

NGMCO, INC.

By: 
Name: Sadiq A. Malik
Title: Vice President and Treasurer

FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of June 30, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (the "Purchase Agreement"); and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) **Section 2.3(a)(v)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Cases through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases, to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include all of Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes and other Liabilities mentioned in the Bankruptcy Court's Order - Docket No. 174), in each case, other than (1) Liabilities of the type described in **Section 2.3(b)(iv)**, **Section 2.3(b)(vi)**, **Section 2.3(b)(ix)** and **Section 2.3(b)(xii)**, (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as

a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this **Section 2.3(a)**;

(b) **Section 2.3(a)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(c) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, (A) the states set forth on **Exhibit G** and (B) if the State of Michigan (1) fails to authorize Purchaser and its Affiliates operating within the State of Michigan to be a self-insurer for purposes of administering workers' compensation Claims or (2) requires Purchaser and its Affiliates operating within the State of Michigan to post collateral, bonds or other forms of security to secure workers' compensation Claims, the State of Michigan (collectively, "Retained Workers' Compensation Claims");

(d) **Section 6.6(d)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement)

designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. As soon as reasonably practicable following a determination that an Executory Contract shall be designated as an Assumable Executory Contract hereunder, Sellers shall use reasonable best efforts to notify each third party to such Executory Contract of their intention to assume and assign such Executory Contract in accordance with the terms of this Agreement and the Sale Procedures Order. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

Section 3. Effectiveness of Amendment. Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

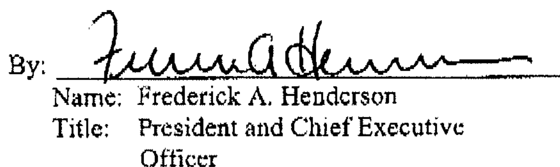
Section 4. Ratification of Purchase Agreement; Incorporation by Reference. Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: 
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: ______________________
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: ______________________
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: ______________________
Name: Michael Garrick
Title: President

NGMCO, INC.

By: ______________________
Name: Sadiq Malik
Title: Vice President and Treasurer

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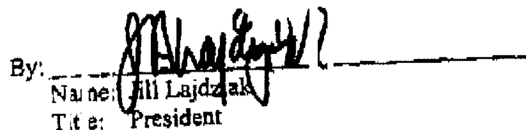
GENERAL MOTORS CORPORATION

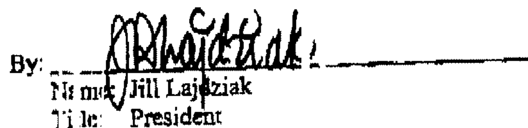
By: ______________________
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC



By: ______________________
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION



By: ______________________
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: ______________________
Name: Michael Garrick
Title: President

NGMCO, INC.

By: ______________________
Name: Sadiq Malik
Title: Vice President and Treasurer

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Title: President and Chief Executive Officer

SATURN LLC

By: ______________________________
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: ______________________________
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: ______________________________
Name: Michael Garrick
Title: President

NGMCO, INC.

By: ______________________________
Name: Sadiq Malik
Title: Vice President and Treasurer

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GENERAL MOTORS CORPORATION

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Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: ______________________________
Name: Jill Lajdziak
Title: President

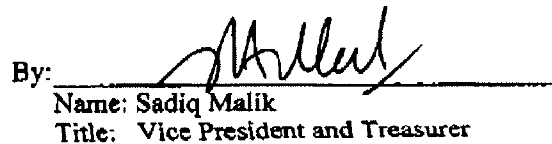
SATURN DISTRIBUTION CORPORATION

By: ______________________________
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: ______________________________
Name: Michael Garrick
Title: President

NGMCO, INC.

By: 
Name: Sadiq Malik
Title: Vice President and Treasurer

SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of July 5, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended, the "Purchase Agreement");

WHEREAS, Sellers and Purchaser have entered into that certain First Amendment to Amended and Restated Master and Purchase Agreement; and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) The following new definition of "Advanced Technology Credits" is hereby included in **Section 1.1** of the Purchase Agreement:

> "Advanced Technology Credits" has the meaning set forth in **Section 6.36**.

(b) The following new definition of "Advanced Technology Projects" is hereby included in **Section 1.1** of the Purchase Agreement:

> "Advanced Technology Projects" means development, design, engineering and production of advanced technology vehicles and components, including the vehicles known as "the Volt", "the Cruze" and components, transmissions and systems for vehicles employing hybrid technologies.

(c) The definition of "Ancillary Agreements" is hereby amended and restated in its entirety to read as follows:

"Ancillary Agreements" means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

(d) The following new definition of "Excess Estimated Unsecured Claim Amount" is hereby included in **Section 1.1** of the Purchase Agreement:

"Excess Estimated Unsecured Claim Amount" has the meaning set forth in **Section 3.2(c)(i)**.

(e) The definition of "Permitted Encumbrances" is hereby amended and restated in its entirety to read as follows:

"Permitted Encumbrances" means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic's, materialmen's, laborer's, workmen's, repairmen's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use

of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

(f) The following new definition of "Purchaser Escrow Funds" is hereby included in **Section 1.1** of the Purchase Agreement:

"Purchaser Escrow Funds" has the meaning set forth in **Section 2.2(a)(xx)**.

(g) **Section 2.2(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all credits, Advanced Technology Credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(h) **Section 2.2(a)(xviii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period;

(i) **Section 2.2(a)(xix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability; and

(j) A new **Section 2.2(a)(xx)** is hereby added to the Purchase Agreement to read as follows:

(xx) all cash and cash equivalents, including all marketable securities, held in (1) escrow pursuant to, or as contemplated by that certain letter agreement dated as of June 30, 2009, by and between Parent, Citicorp USA, Inc., as Bank Representative, and Citibank, N.A., as Escrow Agent or (2) any escrow established in contemplation or for the purpose of the Closing, that would otherwise constitute a Purchased Asset pursuant to **Section 2.2(a)(i)** (collectively, "Purchaser Escrow Funds");

(k) **Section 2.2(b)(i)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(i) cash or cash equivalents in an amount equal to $1,175,000,000 (the "Excluded Cash");

(l) **Section 2.2(b)(ii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities, which for the avoidance of doubt, shall not be deemed to include Purchaser Escrow Funds;

(m) **Section 2.3(a)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (viii) all Liabilities arising under any Environmental Law (A) relating to the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(n) **Section 2.3(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** or (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

(o) **Section 2.3(b)(iv)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third party Claims related to Hazardous Materials that were or are located at or that were Released into the Environment from Transferred Real Property prior to the Closing, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property, except as provided under Section 18.2(e) of the Master Lease Agreement or as provided under the "Facility Idling Process" section of Schedule A of the Transition Services Agreement; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A), (B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(p) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, the states set forth on **<u>Exhibit G</u>** (collectively, "<u>Retained Workers' Compensation Claims</u>");

(q) **Section 3.2(a)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less $8,247,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than $1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

For the avoidance of doubt, immediately following the Closing, the only indebtedness for borrowed money (or any guarantees thereof) of Sellers and their Subsidiaries to Sponsor, Canada and Export Development Canada is amounts under the Wind Down Facility.

(r) **Section 3.2(c)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will, within five (5) Business Days of entry of the Claims Estimate Order, issue additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price, based on the extent by which such estimated aggregate general unsecured claims exceed $35,000,000,000 (such amount, the "Excess Estimated Unsecured Claim Amount;" in the event this amount exceeds $7,000,000,000 the Excess Estimated Unsecured Claim Amount will be reduced to a cap of $7,000,000,000). The number of Adjustment Shares to be issued will be equal to the number of shares, rounded up to the next whole share, calculated by multiplying (i) 10,000,000 shares of Common Stock (adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation, reorganization or similar transaction with respect to the

Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares) and (ii) a fraction, (A) the numerator of which is Excess Estimated Unsecured Claim Amount (capped at $7,000,000,000) and (B) the denominator of which is $7,000,000,000.

(ii) At the Closing, Purchaser will have authorized and, thereafter, will reserve for issuance the maximum number of shares of Common Stock issuable as Adjustment Shares.

(s) **Section 6.9(b)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of $1,175,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at the Eurodollar Rate (as defined in the Wind-Down Facility) plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities or proceeds received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(t) **Section 6.17(e)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies*. As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (collectively, the "Assumed Plans"), and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of

the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(u) A new **Section 6.17(n)** is hereby added to the Purchase Agreement to read as follows:

(n) *Harlem Employees*. With respect to non-UAW employees of Harlem, Purchaser or one of its Affiliates may make offers of employment to such individuals at its discretion. With respect to UAW-represented employees of Harlem and such other non-UAW employees who accept offers of employment with Purchaser or one of its Affiliates, in addition to obligations under the UAW Collective Bargaining Agreement with respect to UAW-represented employees, Purchaser shall assume all Liabilities arising out of, relating to or in connection with the salaries and/or wages and vacation of all such individuals that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date. With respect to non-UAW employees of Harlem who accept such offers of employment, Purchaser or one of its Affiliates shall take all actions necessary such that such individuals shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual in any employee benefit plans (excluding equity compensation plans or programs) covering such individuals after the Closing; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such individual or the funding for any such benefit. Purchaser or one of its Affiliates, in its sole discretion, may assume certain employee benefit plans maintained by Harlem by delivering written notice (which such notice shall indentify such employee benefit plans of Harlem to be assumed) to Sellers of such assumption on or before the Closing, and upon delivery of such notice, such employee benefit plans shall automatically be deemed to be set forth on Section 6.17(e) of the Sellers' Disclosure Schedules. All such employee benefit plans that are assumed by Purchaser or one of its Affiliates pursuant to the preceding sentence shall be deemed to be Assumed Plans for purposes of this Agreement.

(v) A new **Section 6.36** is hereby added to the Purchase Agreement to read as follows:

Section 6.36 Advanced Technology Credits. The Parties agree that Purchaser shall, to the extent permissible by applicable Law (including all rules, regulations and policies pertaining to Advanced Technology Projects), be entitled to receive full credit for expenditures incurred by Sellers prior to the Closing towards Advanced Technology Projects for the purpose of any current or future program sponsored by a Governmental Authority providing financial assistance in

connection with any such project, including any program pursuant to Section 136 of the Energy Independence and Security Act of 2007 ("Advanced Technology Credits"), and acknowledge that the Purchase Price includes and represents consideration for the full value of such expenditures incurred by Sellers.

(w) **Section 7.2(c)(vi)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vi) *[Reserved]*;

(x) **Section 7.2(c)(vii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vii) *[Reserved]*;

(y) **Section 7.3(c)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(viii) *[Reserved]*;

(z) **Section 7.3(c)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ix) *[Reserved]*;

(aa) **Section 7.3(f)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(f) Purchaser shall have (i) offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (ii) transferred to Sellers the UST Warrant and (iii) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(bb) **Exhibit R** to the Purchase Agreement is hereby deleted in its entirety.

(cc) **Exhibit S** to the Purchase Agreement is hereby deleted in its entirety.

(dd) **Exhibit U** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit U** attached hereto.

(ee) **Exhibit X** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit X** attached hereto.

(ff) Section 2.2(b)(iv) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 2.2(b)(iv) of the Sellers' Disclosure Schedule attached hereto.

(gg) Section 4.4 of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 4.4 of the Sellers' Disclosure Schedule attached hereto.

(hh) Section 6.6(a)(i) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 6.6(a)(i) of the Sellers' Disclosure Schedule attached hereto.

Section 3. *Effectiveness of Amendment.* Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

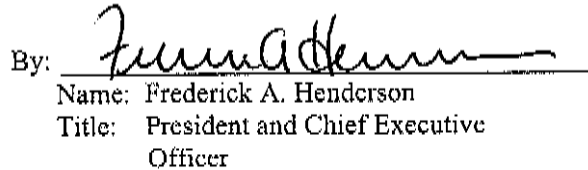
Section 4. *Ratification of Purchase Agreement; Incorporation by Reference.* Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: 
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: ______________________
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: ______________________
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: ______________________
Name: Michael Garrick
Title: President

NGMCO, INC.

By: ______________________
Name: Sadiq Malik
Title: Vice President and Treasurer

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Title: President and Chief Executive Officer

SATURN LLC

By: ______________________________
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: ______________________________
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: ______________________________
Name: Michael Garrick
Title: President

NGMCO, INC.

By: ______________________________
Name: Sadiq Malik
Title: Vice President and Treasurer

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GENERAL MOTORS CORPORATION

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Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: ______________________________

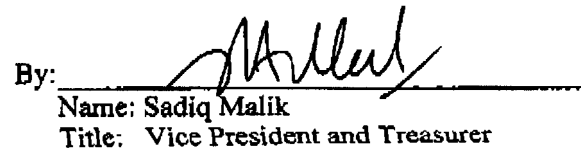
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: ______________________________

Name: Michael Garrick
Title: President

NGMCO, INC.

By: 

Name: Sadiq Malik
Title: Vice President and Treasurer

Exhibit B

COBB COUNTY, GA
FILED IN OFFICE

14 DEC 23 PM 3:24

ANGIE T. DAVIS
STATE COURT CLERK-13

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

VERONICA ALAINE FOX *
*
Plaintiff, *
*
v. * CIVIL ACTION FILE
* NO. 14A 3468-4
*
GENERAL MOTORS LLC and *
ATLANTA AUTO BROKERS, INC. *
*
Defendants. *

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Veronica Fox and files this Complaint for Damages against Defendants General Motors LLC ("GM") and Atlanta Auto Brokers, Inc. ("AAB"), and respectfully shows the following:

INTRODUCTION

On November 12, 2013, Plaintiff Veronica Fox was rendered quadriplegic in a rollover wreck in the General Motors 2004 SRX she was driving. She was properly restrained in the vehicle. When the SRX rolled over, the top of the roof literally came off the vehicle, and the remaining roof structure buckled and collapsed on top of her. Her injuries were caused by the resulting roof crush that occurred during the rollover. Her injuries were entirely preventable. Her injuries would not have happened had GM designed the 2004 SRX to provide proper protection for the occupants in a foreseeable rollover wreck.

GM knows and expects its vehicles *will be* involved in rollovers. GM, like other automakers, has the resources to design and manufacture automobiles that will provide proper

protection to the occupants in a rollover. But GM designed the Cadillac SRX with a roof structure that *it knew* would utterly fail to provide such protection: the roof panel was made almost entirely of glass; the roof was secured to the vehicle by nothing but glue, with no welds or other mechanical fasteners; predictably, the entire, glued-on roof came off during the rollover, leaving a gaping hole in the top of the vehicle and depriving the roof system of the support the top of the roof should provide; there was little to no lateral support going across the roof to help support the sides of the vehicle when the roof panel came off during the roll; and the remaining roof structure was so inadequate, it buckled and crushed onto Veronica Fox's head, catastrophically and permanently injuring her.

Plaintiff files this action to recover for the injuries caused by GM's decision to adopt an unreasonably dangerous roof design, and for Defendants' election not to warn citizens including Plaintiff Fox of the dangers of the 2004 SRX.

I. PARTIES, JURISDICTION, VENUE, & SERVICE OF PROCESS

1.

Plaintiff Veronica Fox is a citizen and resident of the State of Georgia. Plaintiff is subject to the jurisdiction of this Court.

2.

Defendant GM is a foreign corporation organized and incorporated under the laws of Delaware, with its principal place of business located at 300 Renaissance Center, Detroit, Michigan 48265. GM is engaged in the business of designing, manufacturing, marketing, promoting, advertising, distributing, and selling automobiles, trucks, SUVs, and other types of vehicles in the State of Georgia, throughout the United States, and elsewhere.

3.

GM is subject to the jurisdiction of this Court because it transacts business in this State and maintains a registered agent in this State: CSC of Cobb County, Inc., 192 Anderson Street S.E., Suite 125, Marietta, Georgia 30060. GM may be served with legal process there.

4.

Venue is proper in Cobb County as to Defendant GM under O.C.G.A. § 14-2-510 and GA. CONST. art. VI, § 2, ¶ VI, because Cobb County is where Defendant GM maintains a registered agent.

5.

Defendant AAB is a domestic corporation organized and incorporated under the laws of Georgia, with its principal place of business located at P.O. Box 3262, Alpharetta, Georgia 30023. AAB is engaged in the business of buying, selling, and inspecting used automobiles in the State of Georgia.

6,

Defendant AAB is subject to the jurisdiction of this Court because it is incorporated in this State, it transacts business in this State, and maintains a registered agent in this State: Joe Milligan, 487 Cobb Parkway, SE, Marietta, Georgia 30060. AAB may be served with legal process there.

7.

Venue is proper in Cobb County as to Defendant AAB under O.C.G.A. § 14-2-510 and GA. CONST. art. VI, § 2, ¶ VI, because Cobb County is where Defendant AAB maintains a

registered agent and under GA. CONST. art. 6, § 2, ¶ IV because it is a joint tortfeasor with Defendant GM.

II. OPERATIVE FACTS

8.

On November 12, 2013, at around 2:00 a.m., Veronica Alaine Fox was the restrained driver of a 2004 Cadillac SRX designed, manufactured, and sold by Defendant GM (VIN: 1GYDE63A740113793) ("the subject SRX" or "subject vehicle"). Carl Coward was a restrained passenger in the front right seat. The subject SRX was traveling north on I-285, past the intersection with Martin Luther King Dr.

9.

Plaintiff Veronica Fox was properly seated in the driver's seat, wearing her seat belt.

10.

While traveling down the highway, the SRX left the roadway. The SRX rolled over and came to rest off the shoulder north of Martin Luther King Dr.

11.

Defendant General Motors manufactured, designed, marketed, and distributed the subject vehicle with a defective roof which was unable to withstand the forces of this foreseeable and survivable event. As the direct and proximate result of the defects in the roof structure of the subject vehicle, the roof panel came completely off during the wreck and the remaining structure crushed down on Plaintiff Veronica Fox during this incident, rendering her a quadriplegic.

12.

Defendant AAB inspected the vehicle and sold it to Plaintiff shortly before the wreck occurred. Defendant AAB had a duty to warn Veronica Fox of the danger posed by the SRX roof. AAB breached that duty.

13.

The defects and failures of the subject vehicle, combined with the acts and omissions of Defendant AAB, caused Veronica Fox's injuries.

14.

As a direct and proximate result of those defects and failures and Defendants' tortious acts and omissions, Plaintiff Veronica Fox endured, continues to endure, and will endure in the future, physical, and emotional pain and suffering.

15.

Defendant GM designed, tested, manufactured, marketed, distributed, and sold the subject SRX and placed it into the stream of commerce.

16.

The subject SRX was defective, unreasonably dangerous, and not fit for its ordinary use when manufactured at the time of the subject incident because the design GM chose for the roof structure did not offer proper protection to occupants in foreseeable crashes, the risks of GM's chosen design outweighed the utility of the design, and GM did not implement other alternative designs that were safer, feasible, and practicable, and which would have prevented Plaintiff Veronica Fox's injuries.

17.

GM could have reasonably foreseen and did, in fact, foresee the occurrence of rollovers such as the one described in this Complaint.

18.

But for GM's negligent and defective design of the SRX, and the vehicle's failure to offer proper crash protection to occupants in foreseeable wrecks, Veronica Fox would not have been seriously injured in this wreck.

19.

At the time the subject SRX was manufactured and at all times since then, GM has had actual knowledge from, among other things, its notice of real world incidents involving its vehicles, its own testing, and the laws of physics, that when a roof lacks sufficient structural crashworthiness, occupants are highly vulnerable to being injured, paralyzed, or killed in a rollover.

20.

Despite its knowledge set forth above, GM consciously designed the 2004 SRX, and other GM vehicles equipped with the same or similar performing roofs, so that occupants would be subject to injury from roof crush.

21.

Despite knowing at the time the subject Cadillac SRX was manufactured that safer alternative designs were technologically feasible, economically practicable, and fundamentally safer, GM willfully, wantonly, and recklessly chose not to implement any of those alternative

designs in the subject SRX and instead chose a design GM knew would result in preventable injuries and deaths in foreseeable wrecks.

22.

Despite its knowledge of a duty and a need to warn the public, GM failed at the time of manufacture and sale of the subject SRX—and all times since—to adequately warn the consuming public, and Plaintiff in particular, of the dangers in a reasonably foreseeable wreck presented by the design of the SRX roof.

23.

Despite the knowledge set forth in the paragraphs above, GM willfully, wantonly, and recklessly continued to sell the vehicle to the consuming public and maintained it in the stream of commerce without a warning, recall, or remedy of the vehicle's defects.

24.

Defendant GM's willful, reckless, and wanton conduct constituted disregard for the life and safety of Veronica Fox, and the lives and safety of the motoring public generally. GM's willful, reckless, and wanton conduct also manifests a conscious indifference to the foreseeable consequences of that conduct to motorists like Veronica Fox.

25.

No person other than Defendant GM and Defendant AAB is at fault for the injuries and damages sustained by Veronica Fox.

26.

Plaintiff's injuries and damages were proximately caused by the tortious acts and omissions of Defendants. The tortious acts and omissions of Defendants that caused the personal injuries to Veronica Fox are described more fully and specifically in the paragraphs below.

III. SPECIFIC COUNTS

COUNT ONE

Strict Liability of General Motors LLC

27.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 26 of this Complaint.

28.

Defendant GM is strictly liable to Plaintiff under O.C.G.A. § 51-1-11 and other applicable law because the risks inherent in the design of the roof structure in the 2004 Cadillac SRX outweighed any utility of the chosen design, thereby rendering the vehicle defective, unreasonably dangerous, and not reasonably suited to the use for which it was intended. The defects in the SRX include, but are not limited to, the following:

a. The roof structure in the SRX failed to offer proper protection to occupants like Veronica Fox during foreseeable rollover events;

b. The roof panel was made almost entirely of glass with a narrow rim of fiber glass;

c. The roof panel was attached to the vehicle by nothing but glue;

d. During the rollover, the entire roof panel came completely off the vehicle, leaving a gaping hole in the roof of the vehicle;

e. GM knew that the glued-on glass roof would not protect occupants in a rollover;

f. Despite this knowledge, GM did not design the remaining structure to protect occupants in a rollover;

g. GM designed the 2004 SRX with a strength-to-weight ratio of 1.9, which earned it the lowest possible rating for roof strength by the Insurance Institute for Highway Safety. *See* Exhibit A, IIHS Website, http://www.iihs.org/iihs/ratings/ratings-info/roof-strength-test (last visited December 22, 2014). According to IIHS, a strength-to-weight ratio of 1.9 is not "good," "acceptable," or even "marginal"—it is "**poor.**" *Id.*;

h. GM did not adequately test the performance of the SRX's roof structure to determine whether prospective owners, users, and occupants of the 2004 SRX would be exposed to an unreasonable risk of physical harm during rollover events;

i. GM knew, or should have known, from the testing that was performed on the SRX and other GM vehicles with the same or similar roofs, from real world incidents, and from the laws of physics, that the SRX roof would fail, and GM knew that serious injury to vehicle occupants could result;

j. The SRX does not contain, and is not accompanied by, warnings to prospective owners, users, or occupants, including Plaintiff, either at the

time of sale or post-sale, of the unreasonable risk of physical harm associated with the design of the roof structure of the 2004 SRX;

k. The SRX does not contain, and is not accompanied by, adequate warnings to prospective owners, users, or occupants, including Plaintiff, either at the time of sale or post sale, of the unreasonable risk of physical harm associated with the design of the roof structure of the 2004 SRX.

29.

The defects in the 2004 Cadillac SRX, in concert with the negligence of GM's co-Defendant, proximately caused Plaintiff's injuries and damages.

30.

Defendants are liable for the injuries and damages Plaintiff suffered.

COUNT TWO

Negligence of General Motors LLC

31.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 30 of this Complaint.

32.

Defendant GM, as a product manufacturer, owed a duty to the consuming public in general, and Plaintiff in particular, to exercise reasonable care to design, test, manufacture, inspect, market, and distribute a product free of unreasonable risk of harm to owners, users, and occupants.

33.

At the time Defendant GM manufactured, marketed, distributed, and sold the 2004 SRX, GM could reasonably have foreseen and did, in fact foresee, the occurrence of rollover events such as the one described in this Complaint.

34.

Defendant GM breached its duty to exercise reasonable care as set forth in the paragraphs above.

35.

In concert with the negligence of its Co-Defendant, GM's negligence proximately caused Plaintiff's injuries and damages.

36.

Defendants are liable for the injuries and damages suffered by Plaintiff.

COUNT THREE

General Motors LLC's Failure to Warn

37.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 36 of this Complaint.

38.

Defendant GM could reasonably have foreseen and did, in fact, foresee the occurrence of rollover events such as the one described in this Complaint, and it knew or reasonably should have known that the SRX roof would fail in such foreseeable rollover wrecks.

39.

Defendant GM, as a product manufacturer, owed a duty to the consuming public in general, and to Plaintiff in particular, to warn of the dangers arising from the design of the SRX. Defendant GM's duty to warn arose at the time of sale and continued up to, and after, the time of Plaintiff Veronica Fox's injury.

40.

In concert with the negligence of its Co-Defendant, GM's failure to warn proximately caused Plaintiff's injuries and damages.

41.

Defendants are liable for the injuries and damages Plaintiff suffered.

COUNT FOUR

Punitive Damages

42.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 41 of this Complaint.

43.

Defendant GM acted with conscious indifference to the safety and well-being of the public, and willfully and wantonly, as defined by O.C.G.A. § 51-12-5.1, in designing, testing, manufacturing, inspecting, marketing, distributing, selling, and failing to effectively repair or warn about the dangers of the 2004 SRX. GM knew or should have known of those dangers. GM's misconduct warrants the imposition of punitive damages against GM.

44.

Defendant GM's failure to warn was so egregious that it rises to the level of conscious indifference to the safety and well-being of the public under O.C.G.A. § 51-12-5.1. Such misconduct warrants the imposition of punitive damages against GM.

COUNT FIVE

Statute of Repose

45.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 44 of this Complaint.

46.

The willful and wanton misconduct by GM referenced in this Complaint precludes the application of any statute of repose as a defense. Georgia's statute of repose does not bar claims when the defendant acted with willful and wanton disregard of the dangers of its conduct.

47.

GM's failure to warn of the dangers referenced in this Complaint precludes the application of any statute of repose as a defense. Georgia's statute of repose does not bar claims when the defendant failed to warn of the dangers which were known to or should have been known to the defendant.

COUNT SIX

Atlanta Auto Brokers, Inc.'s Failure to Warn

48.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 47 of this Complaint.

49.

Defendant AAB sold the subject 2004 Cadillac SRX to Plaintiff Veronica Fox on or about September 27, 2013, less than two months before the wreck that is the subject of this Complaint.

50.

AAB is in the business of buying, selling, and inspecting cars. It has been in that business for over 20 years. As a result of this extensive experience, AAB has specialized and superior knowledge about cars, car repair and parts, vehicle safety, and vehicle quality.

51.

Before selling the vehicle to Plaintiff, Defendant AAB undertook to inspect the vehicle for Plaintiff's benefit. It therefore had a duty to conduct its inspection non-negligently.

52.

Plaintiff originally sought to purchase a Chevrolet Suburban at AAB, but AAB's inspection had revealed the Suburban needed repairs. AAB therefore discouraged Plaintiff from purchasing that vehicle. AAB told Plaintiff that the SRX had passed its inspection. AAB therefore encouraged her to choose the SRX instead of the Suburban. Plaintiff relied upon

AAB's inspection and its statements about the inspection when she chose to purchase the subject SRX.

53.

AAB also detailed the car before selling it Plaintiff. AAB's inspection and detail of the vehicle either did or should have revealed the dangers of the SRX roof, including but not limited to the fact that the roof was made almost entirely of glass and was attached by nothing but glue. A lay person like Plaintiff would not know that the roof was made of glass because the rear panels of glass were concealed from the inside by the headliner. Plaintiff, in fact, did not know that the roof was made almost entirely of glass until after the wreck occurred.

54.

Defendant AAB encouraged Plaintiff to purchase the SRX because of the sunroof. AAB repeatedly emphasized the sunroof as a selling feature because it extended to the second row of seats. AAB's statements about the sunroof were incomplete and misleading because AAB did not inform Plaintiff that the glass actually extended almost the entire length of the vehicle and because the structure of the roof was itself a deadly design defect.

55.

AAB provided safety warnings to Plaintiff about the use of the sunroof, advising her not to allow passengers to "hang out of the sunroof." AAB's warnings were incomplete and misleading because they suggested that the only danger associated with the roof was the danger of passengers being injured as a result of a decision to "hang out of the sunroof."

56.

Defendant AAB knew or should have known that the SRX roof would not protect occupants in the event of a rollover wreck and therefore had a duty to warn Plaintiff about the dangers created by the SRX roof. AAB's actual or constructive knowledge was a result of its superior knowledge of vehicle parts, quality, and safety, generally—and the SRX's parts, quality, and safety, specifically; its inspection of the vehicle; and its knowledge about the SRX roof and sunroof.

57.

Defendant AAB knew or reasonably should have known that the SRX roof was dangerous and could result in serious or catastrophic injury or death in foreseeable rollover wrecks.

58.

Plaintiff would not have purchased the SRX had she been informed of and known about the dangers of the roof.

59.

In concert with the negligence of its Co-Defendant, AAB's failure to warn proximately caused Plaintiff's injuries and damages.

60.

Defendant AAB is liable for the injuries and damages Plaintiff suffered.

DAMAGES & PRAYER FOR RELIEF

61.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 60 of this Complaint.

62.

As a direct result of the defective condition of the 2004 SRX, GM's negligence and failure to remedy or give appropriate warnings about the vehicle, and AAB's failure to warn about the vehicle, Plaintiff Veronica Fox has suffered severe and permanent personal injuries, including quadriplegia.

63.

Plaintiff Veronica Fox seeks damages from Defendants in an amount to be determined by the enlightened conscience of the jury and as demonstrated by the evidence, for all elements of compensatory damages allowed by Georgia law. Plaintiff's injuries are permanent, and damages sought include the following:

a. all components of the mental and physical pain and suffering Veronica Fox endured upon impact and up until the present time;

b. all components of the mental and physical pain and suffering Veronica Fox will endure in the future;

c. past and future loss of enjoyment of life; and

d. all past and future economic losses, including medical bills, medical expenses, other necessary expenses for the care and treatment of Veronica Fox, including household services.

e. Punitive damages against Defendant GM, pursuant to O.C.G.A. § 51-12-5.1, in an amount to be determined by the enlightened conscience of the jury to be sufficient to punish GM for the harm caused to them and to deter GM from similar misconduct.

64.

WHEREFORE, Plaintiff prays for the following relief:

a. That summons issue and service be perfected upon Defendants requiring them to appear before this Court and answer this Complaint for Damages;

b. That judgment be entered against Defendants;

c. That Plaintiff Veronica Fox recovers all elements of compensatory damages, including general and special damages, against Defendants;

d. That Plaintiff Veronica Fox recovers punitive damages against Defendant GM;

e. That all costs be cast against Defendants; and

f. That Plaintiff has such other and further relief as this Court deems just and proper.

This day of December, 2014.

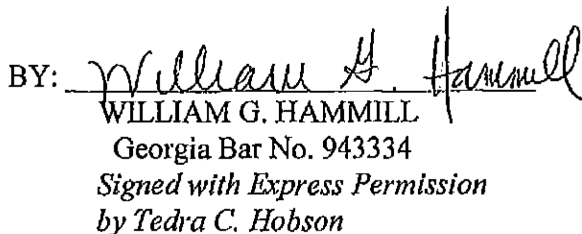
Respectfully submitted,

BUTLER WOOTEN & CHEELEY & PEAK LLP

BY: ______________________
JAMES E. BUTLER, JR.
Georgia Bar No.099625
ROBERT D. CHEELEY
Georgia Bar No. 122727
TEDRA CANNELLA HOBSON
Georgia Bar No. 881085

2719 Buford Highway
Atlanta, Georgia 30324
(404) 321-1700

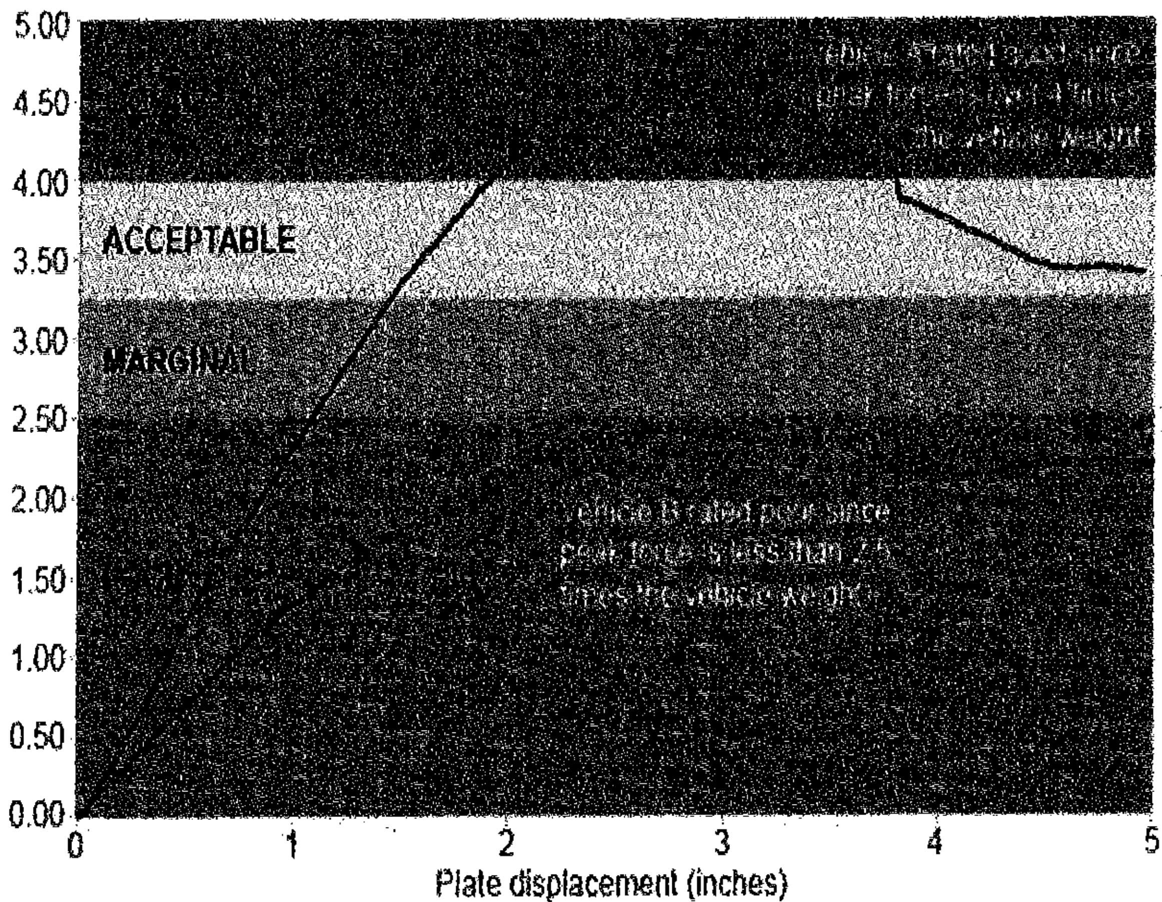
KENNETH S. NUGENT PC

BY: 
WILLIAM G. HAMMILL
Georgia Bar No. 943334
Signed with Express Permission
by Tedra C. Hobson

4227 Pleasant Hill Road
Building 11, Suite 300
Duluth, GA 30096
(404) 885-1983

ATTORNEYS FOR PLAINTIFF

EXHIBIT A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4.00
3.50
3.00
2.50
2.00
1.50
1.00
0.50
0.00
ACCEPTABLE
MARGINAL
0
1
2
3
4
5
Plate displacement (inches)

Exhibit C

FILED IN MY OFFICE
DISTRICT COURT CLERK
12/30/2013 11:14:36 AM
STEPHEN T. PACHECO
byh

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

THE WRONGFUL DEATH ESTATE OF CLAUDIA LEMUS, Deceased, by and through, DAVID P. GARCIA, as Personal Representative,

Plaintiff,

v. **No.** D-101-CV-2013-03270

GENERAL MOTORS, LLC and PERFORMANCE CHEVROLET, PERFORMANCE BUICK GMC, and HI-COUNTRY CHEVROLET, INC.

Defendants.

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff, by and through her counsel, Carter & Valle Law Firm, P.C., (Richard J. Valle), Emeterio L. Rudolfo, and TURNER & ASSOCIATES, P.A. (*pro hac vice pending*) and bring the following action against Defendants pursuant to applicable New Mexico law:

PARTIES

1. Plaintiff David P. Garcia is an appropriate person to serve as personal representative for purposes of presenting the Estate's claims herein. Mr. Garcia is a practicing attorney licensed in the State of New Mexico located in Santa Fe, New Mexico.

2. Plaintiff requests that the Court appoint David P. Garcia as the wrongful death Personal Representative as provided under New Mexico law.

3. Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company and the successor to GM. On July 10, 2009, GM's continuing operational assets were

transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009, with a plan to re-emerge as a less debt-burdened organization. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company, marking the emergence of a new operation from the "pre-packaged" Chapter 11 reorganization. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted

responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as GM-LLC, was and is authorized to conduct business in New Mexico, owns property in New Mexico, conducts business in New Mexico and derives significant revenue from its activities in New Mexico, and is therefore subject to be sued in New Mexico courts. At all times relevant to the complaint, GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles, including the defective truck that forms the subject matter of this litigation. The GM agent for service of process resides in New Mexico.

4. Defendant PERFORMANCE CHEVROLET is a New Mexico corporation that sold the vehicle at issue. Defendants PERFORMANCE BUICK GMC, and HI-COUNTRY CHEVROLET, INC. are on information and belief the successors in interest to PERFORMANCE CHEVROLET and are collectively referred to as "Dealer" or "Dealers."

JURISDICTION AND VENUE

5. All of the material acts and/or omissions complained of herein occurred in San Juan County, State of New Mexico.

6. This Court has original jurisdiction over Plaintiff's claims pursuant to NMSA 1978 § 41-4-18.

7. Venue is properly laid in this district pursuant to NMSA 1978 § 38-3-1(F) and § 41-4-18(B).

FACTS COMMON TO ALL CAUSES OF ACTION

8. At approximately 9:55 p.m. on February 20, 2013, decedent Lemus was driving her 2008 GMC pickup on Highway 550 at a safe and reasonable speed given the surrounding conditions.

9. As decedent Lemus approached mile marker 115, undetectable icy conditions on the roadway caused the vehicle to begin to skid. The vehicle crossed over the center median and into other traffic lanes before rolling over and coming to rest on its roof.

10. As the vehicle rolled, and despite wearing her safety belt at all times, decedent Lemus died as a result of fatal injuries caused and/or enhanced by the crash.

11. Decedent Lemus endured intense physical pain and suffering, emotional distress and fear during the course of the incident described above until her death.

12. The defective vehicle which forms the basis for this suit is a 2008 GMC truck designed, tested, manufactured, assembled, and/or distributed by GM-LLC.

COUNT I
STRICT LIABILITY

13. Plaintiff incorporates all prior allegations as if fully set forth herein.

14. The subject pickup truck is defective and unreasonably dangerous by design when used as marketed by GM-LLC. The inherent defects in the design were present at the time the vehicle was manufactured and distributed. The defects in the vehicle were a proximate and producing cause of the enhanced injuries, death and damages. At all times relevant to the Complaint, GM-LLC was in the business of designing, manufacturing or otherwise distributing automobiles. The defective nature of the design of the truck included defects in design; stability;

handling; marketing; instructions; warning; crashworthiness; rollover resistance and controllability. The defective nature of the vehicle includes the following

A. The truck is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency situations, both alone and in towing combinations, and does not remain controllable under all operating conditions as required by GM-LLC guidelines, including the tendency to oversteer and skate;

B. The combination of the conditions described in subparagraphs (a) through (b) above creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

C. The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable emergency situations, including towing situations, and maneuvers, which GM-LLC had both actual and constructive knowledge would lead to rollover crashes. GM-LLC's knowledge included both actual knowledge based on its test history with SUVs; its research and knowledge of rollover in foreseeable turning maneuvers; and given its corporate history with respect to truck-type product designs;

D. The risk of operating the vehicle as designed outweighed any benefits associated with the design and GM-LLC knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries; and knew that rollover crashes were particularly dangerous;

E. GM-LLC knew that this type vehicle was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds, including while towing;

F. The truck was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system – roof, safety belt system, and glazing design – that would effectively provide reasonable protection in the event of a rollover. GM-LLC knew that the belt system would not effectively and reasonably restrain occupants involved in freeway-speed rollovers and GM-LLC knew of the risk that the roof was not sufficiently strong to provide a safety cage for the occupants, and that countermeasures for rollover resistance and rollover occupants protection were both technologically and economically feasible at the time of manufacture, and that these features (roll stability control; ESC; pretensioning; safety canopies and integrated belts) were necessary and reasonable features to protect occupants, keep them inside the safety zone, and keep the safety zone from collapsing. Despite knowledge of these risks, and the availability of alternative safer designs,

GM-LLC intentionally marketed the vehicle to consumers for use as a freeway, passenger-carrying vehicle, and intentionally led consumers to believe that it was safe, stable, and would provide state of the art protection to occupants in rollovers despite clear knowledge that key safety technology was not incorporated into the product;

G. GM-LLC knew that the vehicle was not sufficiently equipped with restraints (including buckles) that were designed to perform safely in rollovers, despite the fact that GMC marketed the vehicle for freeway use while towing;

H. GM-LLC had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, and that the alternatives were technologically feasible and available;

I. GM-LLC willfully, wantonly, and consciously marketed the truck for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.

15. The defective nature of the vehicle was a proximate and producing cause of the accident, injuries, death of decedent Lemus and damages suffered by the Plaintiffs. GM-LLC is therefore strictly liable for supplying a defective and unreasonably dangerous product that resulted in personal injury, death and property damage.

16. A safer alternative design was economically and technologically feasible at the time the product left the control of GM-LLC, both with respect to handling and rollover propensity and crash protection.

17. Dealers are liable as provided under New Mexico Law for their distribution of the defective vehicle.

COUNT II
NEGLIGENCE (GM-LLC)

18. Plaintiff incorporates all prior allegations as if fully set forth herein.

19. At all times relevant to this Complaint, GM-LLC was in the business of supplying motor vehicles for use on the public roadways. GM-LLC held themselves out to

the public as having specialized knowledge in the industry, especially with respect to truck products with towing capability. As such, GM-LLC owed consumers, including the Plaintiff, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the truck. GM-LLC violated this duty by negligently supplying a vehicle that was defective and not reasonably safe for the uses for which it was marketed. The negligent acts include but are not limited to the following acts or omissions:

a. Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;

b. Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;

c. Negligently designing and testing the vehicle from an occupant protection standpoint;

d. Negligently testing of the vehicle from a handling and stability standpoint when towing;

e. Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover, and to ensure that towing capability was reasonably safe;

f. Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;

g. Failing to disclose known defects, dangers, and problems to both dealers and the public;

h. Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;

i. Failure to meet or exceed internal corporate guidelines;

j. Negligently advertising the vehicle as safe and stable towing vehicle;

k. Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of roll sensing, pretensioners, side air bags (canopies) and curtain technology, including ejection reduction, and integrated seating technology;

l. Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

m. Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;

n. Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.

20. These acts of negligence were a proximate and producing cause of the accident, injuries, death and damages suffered by the Plaintiff. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT III
BREACH OF WARRANTY

21. Plaintiff incorporates all prior allegations as if fully set forth herein.

22. At all times relevant to the complaint, Defendant GM-LLC was a "merchant" in the business of supplying "goods". The truck was a "good" and/or "product" sold for consumer usage under applicable New Mexico law.

23. Prior to the sale of the truck, and release of the truck into the marketplace, GM-LLC had reason to know the purpose for which Lemus specifically - and as a general consumer of the products which were designed, manufactured, and marketed by GM-LLC, individually and/or in tandem - bought the truck.

24. GM-LLC had reason to know that decedent Lemus was relying on GM-LLC's skill or judgment to design, manufacture, market, and select goods suitable for the purpose for which they were sold.

25. Decedent Lemus relied on GM-LLC to design, manufacture, market, and select the appropriate goods.

26. As such, GM-LLC breached the warranties of merchantability and fitness for a particular purpose in that the truck in question was not fit for ordinary use or for the intended use for which it was purchased.

27. GM-LLC's warranties extended to Plaintiff.

28. These breaches of warranty proximately resulted in the accident, injuries, death and damages suffered by the Plaintiff.

29. Notice has been provided as required by law.

DAMAGES

30. Plaintiff incorporates all prior allegations as if fully set forth herein.

31. As a direct and proximate result of negligence of the Defendants as set forth herein, Plaintiffs incurred and seek the following general and special damages, including damages for wrongful death:

A. Wrongful death damages for the Estate of decedent Lemus;
B. Pain and suffering and emotional distress, past and future;
C. Funeral and burial expenses;
D. Reasonable and necessary medical and non-medical care, treatment and services;
E. The nature, extent, and duration of Plaintiffs' injuries;
F. Loss of guidance and counseling for the minor children who have survived the death of their mother;
G. Physical impairment;
H. The aggravating circumstances attending the wrongful acts and omissions of the Defendant;
I. Any appropriate punitive damages.

32. As discussed in the aforementioned paragraphs, and pursuant to UJI 13-1827 on punitive damages, the conduct of Defendant GM-LLC was willful, reckless, and/or wanton and gives rise to punitive damages as outlined above.

WHEREFORE, Plaintiff requests the following relief:

a. Awards of general and special compensatory damages as set forth above;

b. Their costs of action herein;

c. Interest as allowed by law;

d. Any appropriate punitive damages; and,

e. Such other and further relief as the Court may deem appropriate under the circumstances.

Respectfully submitted,

CARTER & VALLE LAW FIRM, P.C.

<u>/s/ Richard J. Valle</u>
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Exhibit D

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CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

TAMMIE CHAPMAN, Personal Representative of the Estate of AUBREY CHAPMAN, Deceased, Plaintiff, vs. GENERAL MOTORS, LLC; NABHOLZ, INC.; RUSSELL CHEVROLET COMPANY Defendants.	**Civil Action:** __________

ORIGINAL COMPLAINT

Plaintiff, TAMMIE CHAPMAN, Personal Representative of the Estate of AUBREY CHAPMAN, Deceased, submits the following Complaint against Defendants, stating:

1.

This is a products liability, negligence, and wrongful death action brought pursuant to Arkansas law. The single vehicle rollover crash that forms the subject of this litigation occurred on July 26, 2012, while the Decedent was traveling through Colorado. The subject vehicle, including the safety system, was placed into the chain of commerce, distributed, and maintained in Pulaski County, Arkansas.

2.

Plaintiff TAMMIE CHAPMAN is a citizen and resident of Hot Spring County, Arkansas, and the former spouse of the Decedent. She is the duly-appointed Administratrix and Personal Representative of the Estate of AUBREY CHAPMAN, Deceased. AUBREY CHAPMAN was a citizen and resident of Hot Spring County, Arkansas at the time of his death with his residence in Bismarck, Arkansas.

3.

Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company and the successor to GM. On July 10, 2009, GM's continuing operational assets were transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009, with a plan to re-emerge as a less debt-burdened organization. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company, marking the emergence of a new operation from the "pre-packaged" Chapter 11 reorganization. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as GM-LLC, was and is authorized to conduct business in Arkansas, owns property in Arkansas, conducts business in

Arkansas and derives significant revenue from its activities in Arkansas, and is therefore subject to be sued in Arkansas courts. At all times relevant to the complaint, GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles, including the defective truck that forms the subject matter of this litigation. GM conducts business in Arkansas and is subject to jurisdiction in Arkansas. GM may be served with process through its registered agent, Corporation Service Company, 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock, Arkansas, 72201.

4.

At all times relevant to the subject complaint, *GM* was in the business of designing, developing, testing, assembling, manufacturing, marketing, and distributing automobiles, including the subject 2004 model Silverado C1500 pickup truck, worldwide.

5.

Defendant NABHOLZ, INC. (hereinafter "*Nabholz*") is an Arkansas for profit corporation whose business address includes offices at 3000 W. 68th Street, Little Rock, Arkansas. *NABHOLZ* was authorized to conduct business in Arkansas, conducted business in Arkansas, had agents in Arkansas, and derived economic profit from Arkansas. As such, *NABHOLZ* is subject to personal jurisdiction in Arkansas and may be served with process through its agent, Greg Williams, 612 Garland, Conway, Arkansas 72032.

6.

RUSSELL CHEVROLET COMPANY (hereinafter *Russell*) is an Arkansas corporation whose primary business is located at 6100 Landers Road, North Little Rock, Pulaski County, Arkansas. *Russell* is an authorized GM dealership, providing inventory of new and used cars and SUVs for the consuming public. *Russell* placed the vehicle in question into the stream of commerce in a defective and unreasonably dangerous condition and provided service and maintenance. *Russell* may be served with process through its registered agent, Bob Russell at 6100 Landers Road, Sherwood, Arkansas, 72120.

7.

JURISDICTION AND VENUE

Venue is appropriate in Pulaski County, Arkansas, because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, and the county of defendant's residence. The amount in controversy exceeds the jurisdictional limits of the court.

8.

FACTUAL BACKGROUND

This is a products liability, negligence, and wrongful death action brought pursuant to Arkansas law. The single vehicle rollover crash that forms the subject of this litigation occurred on July 26, 2012, while the Decedent was traveling through Colorado. The subject vehicle, including the safety system, was placed into the chain of commerce, distributed, and maintained in Pulaski County, Arkansas. At all times relevant to the Complaint, Defendants were in the business of designing, developing, assembling, testing, manufacturing, and distributing vehicles and tires for use by consumers.

9.

The 2004 model GM pickup was designed, manufactured, marketed, distributed and sold by *GM and Russell.* The truck was designed and marketed for use on the freeways as a safe and stable passenger-carrying vehicle.

10.

The GM truck was equipped with a safety belt system that was designed, tested, manufactured and distributed, individually and jointly, by *GM* and suppliers. *GM* created all design and performance specifications, including the choice of restraints and safety systems to be designed into the vehicle. At all times relevant to the complaint, the restraint system, including the buckle, were defective and unreasonably dangerous.

11.

COUNT I
(Strict Liability/Products Liability – Design Defect)
GM-RUSSELL

At all times relevant to the complaint, the defendants were in the business (for profit) of designing, manufacturing, assembling, marketing, and distributing automobiles and auto components, including tires and safety belt systems. The products in question – the GM truck, and the occupant safety equipment (belt-roof-glazing), all contained design defects at the time the product was manufactured, all of

which combined to cause, proximately cause, and result in the producing cause of the damage, injuries, enhanced injuries, and damages alleged herein. The referenced design defects in the products are and were conditions of the products that rendered the products unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in use. At all times relevant to the Complaint, "safer alternative designs" existed, other than the ones actually used for the vehicle and tire, that in reasonable probability would have prevented or significantly reduced the risk of the occurrence or injury in question without substantially impairing the product's utility; and were economically and technologically feasible at the time the products left the control of the defendants by the application of existing or reasonably achievable scientific knowledge.

12.

The defective nature of the design of the truck included defects in design, stability, handling, marketing, instructions, warning, crashworthiness, rollover resistance and controllability, including the tendency to skate. The defective nature of the vehicle includes the following:

- The truck is defective in that the design of the "package," which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of loss of control and rollover given the uses for which the vehicle was marketed;

- The truck is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency turning maneuvers and does not remain controllable under all operating conditions as required by *GM* guidelines, including the tendency to overseer and skate in foreseeable turning maneuvers;

- The truck is unreasonably dangerous from a stability standpoint because it rolls over instead of slides when loss of control does occur on relatively flat level surfaces during foreseeable steering maneuvers;

- The truck is defective from a handling standpoint because it has an unreasonable tendency to get oversteer, skate and get sideways in emergency situations, and does not remain controllable under all operating conditions as required by *GM* guidelines;

- The combination of the foregoing creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

- The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable turning maneuvers that are consistent with *GM's* effort to market the vehicle as a passenger-carrying vehicle at freeway speeds, which *GM* had both actual and constructive knowledge would lead to rollover crashes. *GM's* knowledge included both actual knowledge based on its test history with trucks and SUVs; its research and knowledge of rollover in foreseeable turning maneuvers;

- The vehicle was defectively marketed in that consumers were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying vehicle when defendants knew that this was untrue;

- The risk of operating the vehicle as designed outweighed any benefits associated with the design and the defendants knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries; and knew that rollover crashes were particularly dangerous;

- The defendants knew that this type vehicle—a light truck —was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds;

- The truck was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system—roof, safety belt system, and glazing design—that would effectively provide reasonable protection in the event of a rollover. GM knew that the belt system would not effectively and reasonably restrain occupants involved in freeway-speed rollovers, including actual knowledge learned from suppliers in the industry as early as 1996, and *GM* knew of the risk that the roof was not sufficiently strong to provide a safety cage for the occupants. Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing—such as pretensioners and side airbags or curtains—*GM* intentionally marketed the vehicle to consumers for use as a freeway, passenger-carrying vehicle, and intentionally led consumers to believe that it was safe, stable, and would provide state of the art protection to occupants;

- The defendants had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

- The defendants willfully, wantonly, and consciously marketed the truck for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public, including information about vehicle failures worldwide;

- *GM* failed to act appropriately to take reasonable steps to protect occupants in the event of a rollover. GM's conscious disregard for known facts surrounding available technology and the performance of the truck constitutes malicious conduct under applicable law.

13.

The defective nature of the truck was a proximate and producing cause of the crash and injuries and damages suffered by Plaintiffs. The products were in the substantially the same condition on the date of the crash as they were at the time of manufacture. The Defendants are therefore strictly liable for supplying a defective and unreasonably dangerous product(s) that resulted in plaintiffs' personal injury and property damage.

14.

COUNT II
NEGLIGENCE

At all times relevant to the Complaint, defendant GM was in the business of supplying motor vehicles, components, and safety equipment for use on the public roadways in Arkansas. The defendant held themselves out to the public as having specialized knowledge in the industry, especially with respect to trucks, SUVs and safety components. As such, the defendant, individually and jointly, owed consumers, including the plaintiffs, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the truck and safety equipment. The defendant violated this duty by negligently supplying a vehicle that were defective, unreasonably dangerous, and knowingly harmful to consumers when used as marketed. The negligent acts include but are not limited to the following acts or omissions:

- Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;
- Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;
- Negligently designing and testing the vehicle so as to assure its controllability;
- Negligently testing of the vehicle from a handling and stability standpoint, including negligent failure to appropriately test and evaluate the design approved for use on the truck;

- Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;

- Failing to adequately train and assist dealers in the dangers associated with the vehicle and tires when used as marketed;

- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;

- Failure to meet or exceed internal corporate guidelines;

- Negligently advertising the vehicle as safe and stable family vehicle;

- Failing to inform the consumer, including the plaintiffs, of the information the defendants knew about rollover risk and specifically the truck, thus depriving plaintiffs of the right to make a conscious and free choice, and also in failing to disclose known problems in foreign countries in an effort to conceal problems that the defendants knew about the truck;

- Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of safe retractors, latch plates, roll sensing, ESC, pretensioners, side air bag and curtain technology, and integrated seating technology;

- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

- Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;

- Negligent failure to warn of aging problems associated with the safety equipment.

Nabholz was generally negligent in failing to maintain the vehicle for itself and for permissive users such as Plaintiff, and breaching its legal duty owed to Decedent. *Nabholz* negligence was a proximate cause of the crash, death and damages. These acts of negligence of all defendants combined as a proximate and producing cause of the incident in question and the injuries and damages sustained by Plaintiffs.

15.

During all relevant time periods, defendants *GM* had actual and constructive knowledge of the dangers associated with the failure of the truck, and in particular the failure of the combination of vehicle and safety equipment. Despite such knowledge, the defendant GM acted in their own interests, with an "evil mind," in a willful, wanton

and malicious manner, having reason to know, and consciously disregarding, a substantial risk that their conduct might significantly injure or kill others. The defendant had both objective and subjective knowledge of the dangers and risks associated with their products in the hands of consumers and, as such, should be punished in the form of punitive or exemplary damages.

16.

Plaintiffs are seeking monetary damages from the defendants, jointly and severally, as found to be reasonable by the jury after consideration of all evidence. The plaintiffs are seeking recovery for the following types of injuries and damages:

- Conscious pain and suffering in the past and in the future;
- Past medical and funeral expense;
- Past and future mental and emotional anguish;
- Past and future loss of earnings;
- Loss of life and the value of life;
- Loss of society and companionship;
- Punitive or exemplary damages;
- For costs incurred herein, including attorneys fees;
- For pre-judgment interest at the maximum rate allowed by law;
- For post-judgment interest at the maximum rate allowed by law;
- For such other and further relief as the Court may deem just and proper.

DATED this 21st day of July, 2015.

/s/ C. TAB TURNER
Tab Turner
Bar #85158
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Attorneys for the Plaintiff

Exhibit E

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James A. Noel
Patricia Serna

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

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CONSTANCE HAYNES-TIBBETTS, Individually and as Wrongful Death Personal Representative of the Estate of JON TIBBETTS, Plaintiffs, vs. ARMANDO SAENZ; INTEGRITY AUTOMOTIVE L.L.C.; GENERAL MOTORS, LLC; FORD MOTOR COMPANY; and JOHN DOES 1-3; Defendants.	No. D-202-CV-2015-04918

PLAINTIFF'S COMPLAINT TO RECOVER DAMAGES FOR PERSONAL INJURY AND OTHER DAMAGES PURSUANT TO NEW MEXICO STATUTORY AND COMMON LAW

Plaintiff, CONSTANCE HAYNES-TIBBETTS, Individually and as Wrongful Death Personal Representative of the Estate of JON TIBBETTS, submits the following Complaint pursuant to New Mexico law, stating:

PARTIES

1.

At the time of his death on July 23, 2012, Jon Tibbetts ("Decedent" or "Decedent Jon Tibbetts"), age 59, was a citizen and resident of Bernalillo County, New Mexico. The Decedent was employed full-time as the Fire Chief for Sandoval County, New Mexico.

2.

Plaintiff Constance Hayes-Tibbetts (hereinafter "Plaintiff Connie Tibbetts" or "Plaintiff") is a citizen and resident of Bernalillo, County New Mexico. Plaintiff Connie Tibbetts was the Decedent's spouse and is the duly-appointed Wrongful Death

Personal Representative of Decedent's Estate, which is filed in Bernalillo County, New Mexico.

3.

Defendant Armando Saenz ("Defendant Saenz") is a citizen and resident of Bernalillo County, New Mexico. Defendant Saenz is over the age of majority, not on active duty in any branch of the United States Armed Forces, and is otherwise subject to jurisdiction of the Court.

4.

Defendant Integrity Automotive, L.L.C. d/b/a Integrity Automotive ("Defendant Integrity Automotive"), is a New Mexico for-profit corporation (LLC), with its principal business being the sale of pre-owned automobiles located at 9790 Coors Blvd NW, Albuquerque, New Mexico.

5.

Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company and the successor to GM. On July 10, 2009, GM's continuing operational assets were transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009, with a plan to re-emerge as a less debt-burdened organization. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company, marking the emergence of a new operation from the "pre-packaged" Chapter

11 reorganization. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as GM-LLC, was and is authorized to conduct business in New Mexico, owns property in New Mexico, conducts business in New Mexico and derives significant revenue from its activities in New Mexico, and is therefore subject to be sued in New Mexico courts. At all times relevant to the complaint, GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles, including the defective truck that forms the subject matter of this litigation. GM-LLC'S authorized agent for service of process is Corporation Service Company, 123 East Marcy Street, Suite 101, Santa Fe, New Mexico 87501.

6.

Defendant FORD MOTOR COMPANY (hereinafter "*Ford*"), is a Delaware corporation with its principal place of business in Dearborn Michigan. *Ford* is authorized to conduct business in New Mexico; conducts business in New Mexico; and derives substantial economic profits from New Mexico. As such, *Ford* is subject to personal jurisdiction in this state. *Ford* is an American multinational automaker headquartered in Dearborn, Michigan, a suburb of Detroit. It was founded by Henry Ford and incorporated on June 16, 1903. The company sells automobiles and commercial vehicles under the Ford brand and luxury cars under the Lincoln brand. In 2011, *Ford* discontinued the Mercury brand, under which it had marketed entry-level luxury cars in the United States, Canada, Mexico, and the Middle East since 1938. In the past it has also produced heavy trucks, tractors and automotive components. *Ford* owns small stakes in Mazda of Japan and Aston Martin of the

United Kingdom. It is listed on the New York Stock Exchange and is controlled by the Ford family, although they have minority ownership. *Ford* is the second-largest U.S.-based automaker and the fifth-largest in the world based on 2010 vehicle sales. At the end of 2010, *Ford* was the fifth largest automaker in Europe. *Ford* is the eighth-ranked overall American-based company in the 2010 Fortune 500 list, based on global revenues in 2009 of $118.3 billion. In 2008, *Ford* produced 5.532 million automobiles and employed about 213,000 employees at around 90 plants and facilities worldwide. *Ford*'s authorized agent for service of process is CT Corporation System, 123 E. Marcy Street, Ste. 201, Santa Fe, NM 87501.

7.

Defendants John Does 1-3 are unidentified people or corporations who were, or may have been, involved in recommending, installing, selling, distributing, or otherwise participating in the service of the Cadillac SRX, including installation of the inappropriate tire, wheels, and attachments on the Saenz vehicle. The information necessary to specifically identify who those people and entities are is in the unique and exclusive possession of Defendants Integrity and Saenz and therefore not obtainable.

JURISDICTION AND VENUE

8.

This civil action is brought under theories of strict liability, negligence, breach of implied warranty, personal injury, and wrongful death.

9.

This Court has jurisdiction over the subject matter of this action and venue is proper in Bernalillo County because all or part of Plaintiff's cause of action arose in Bernalillo County, Defendants *GM-LLC* and *Ford* do business in Bernalillo County and maintain statutory agents in New Mexico upon which service of process may be had, and Plaintiff Connie Tibbetts and Defendant Armando Saenz are residents of Bernalillo County, State of New Mexico.

GENERAL ALLEGATIONS

10.

The defective 2005 Cadillac SRX (VIN: IGYEE63A950117981) which forms the basis for this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by Defendant *GM-LLC*. The Cadillac SRX is a luxury mid-size crossover

SUV produced by the Cadillac division of American automaker General Motors since the 2004 model year. The SRX is manufactured at GM's Lansing Grand River Plant in Lansing, Michigan, as well as assembled overseas in Russia and China. It was designed by GM from the Cadillac and Cadillac STS platform with the designation GMT-265 (Sigma platform). The SUV is designed with 116" wheelbase; 195" length; 73" width; and 68" height. The vehicle is equipped with a five or six-speed automatic transmission. Rear-wheel and four-wheel drive and MagneRide are available. The first generation SRX was available through the 2009 model year. The Insurance Institute for Highway Safety ("IIHS") found the 2005-08 SRX worst in its class for driver fatalities with a death rate of 63 compared to its class average of 23. For the 2010 model year, Cadillac introduced an all-new SRX based on the Provoq concept vehicle. The new version used its own unique platform with ties to Epsilon II.

11.

Defendant Integrity Automotive sold the defective 2005 Cadillac to Defendant Armando Saenz just days before the July 23, 2012, fatal collision.

12.

The defective 2004 Ford Explorer (VIN: 1FMZU73K64ZA14385) which forms the basis of this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by *Ford*. The Ford Explorer is a mid-size sport utility vehicle produced by Ford since 1990 (as 91 model year). Until 2010, the Explorer was formed from a traditional body-on-frame, mid-size SUV design. For the 2011 model year, Ford moved the Explorer to a more modern unibody, full-size crossover SUV/crossover utility vehicle platform, the same Volvo-derived platform the Ford Flex and Ford Taurus use. For purposes of marketing, the Explorer is slotted between the traditional body-on-frame, full-size Ford Expedition and the mid-size CUV Ford Edge. The fifth generation Explorer shares platforms with the Ford Flex and Lincoln MKT. The Explorer has been involved in controversy, after a spate of fatal rollover accidents throughout the 1990s and early 2000s, including those involving Explorers fitted with Firestone tires. The 4-door Explorer and its companion the Mercury Mountaineer were redesigned in 2001, and entirely for the 2002 model year, losing all design similarity with the Ford Ranger while also gaining a similar appearance to the Ford Expedition. The 2002-2004 models saw introduction of stability control as an option, Ford's *AdvanceTrac* with *Roll Stability Control* system. The stability control system became standard for the 2005

model year. For the third generation, Ford installed fully independent rear suspension in the 4-door Ford Explorer and Mercury Mountaineer - but not in the smaller Sport model. The suspension replaced the non-independent "live axle" rear suspension used in previous model year Explorers. With a fully independent rear suspension, each rear wheel connects to the rear differential via a half-shaft drive axle. The design was intended to offer increased ride comfort, on-road handling, and vehicle stability. One reason for Ford's switch to independent rear suspension in the Explorer was due to the well-publicized rollover problem associated with the design, including resulting fatalities that occurred with the previous generations of Ford Explorer. The 2006 model year brought about an update with the introduction of a new frame produced by *Magna International* rather than *Tower Automotive*. By 2008, Ford added side curtain airbags across the Explorer range. By 2009, the Explorer received a trailer sway control system as standard equipment, and the navigation system received traffic flow monitoring and a gas information system. By 2011, the fifth generation Explorer evolved to a unibody structure based on the D4 platform, a modified version of the D3 platform. The newer Explorer featured blacked-out A, B, and D-pillars to produce a *floating roof* effect similar to Land Rover's floating roof design used on its sport utility vehicles. The fifth generation Explorer (2011), assembly moved to Ford's Chicago Assembly plant, where it is built alongside the Ford Taurus and Lincoln MKS. The Louisville plant, where the previous generation was built, was converted to produce cars based on Ford's global C platform (potentially including the Ford Focus, Ford C-Max, and Ford Kuga). Much like Ford's Escape, the Explorer continues to be marketed as an "SUV" rather than a "crossover SUV". With the discontinuation of the Ford Crown Victoria in 2011, and to compete with police model sport utility vehicles offered by other automobile manufacturers, Ford made the 2012 model year Explorer the basis for a "new" SUV-type Police vehicle. It is only available to law enforcement and other emergency services agencies. Ford calls it the *Utility Police Interceptor*. Major differences between the standard Explorer and the Utility Police Interceptor included provisions for emergency services related equipment such as radios, light bars and sirens. Ford actively marketed the so-called "special service" version of the Explorer as the industry's "first pursuit-rated, all-wheel-drive (AWD) vehicle" with special features such as "bigger brakes, springs and mpg figures for surer stopping, better stability, and greater fuel efficiency." Ford likewise represented and warranted that the Explorer

special service version had "faster, ultra-tenacious acceleration thanks to higher horsepower combined with standard AWD", as well as "higher electrical capability". Ford further marketed and sold the police package as "hailing from the same platform so they share many common maintenance parts (no matter the powertrain), including tires, wheels, brake pads, rotors, calipers, and alternator." Ford likewise represented that the design was made for "officer protection" in that it was certified for protection, including certified for a 75 mph rear-impact crash, so-called "shields of armor" as panels for ballistics protection, steel intrusion plates built into the seat backs, and a "safety cell" construction designed to direct force of a collision around the occupant compartment ("SPACE" meaning Side Protection and Cabin Enhancement), including the use of an architecture made of hydro formed cross-vehicle beams between the door frames designed to solidify the sides along with ultra-high-strength steel reinforcement for added occupant protection. The vehicle was marketed with Ford's canopy system and front seat side airbags as well.

13.

On July 23, 2012, Defendant Armando Saenz was driving the 2005 Cadillac SRX northbound on U.S. Interstate 25, at a speed at or near the posted speed limit. During the course of Saenz' journey, he negligently lost control of his vehicle, struck a center concrete barrier, and then veered back to the right where he struck the left side of the 2004 Ford Explorer being driven northbound by the Decedent. Following impact, the Decedent attempted to control the Explorer, but due to its defective design, he was unable to and the Explorer rolled over multiple times causing Decedent to suffer serious injury and death.

COUNT I
NEGLIGENCE
DEFENDANT ARMANDO SAENZ

14.

Defendant Armando Saenz owed the duty to exercise due care in the operation of the vehicle he was driving, including maintaining appropriate speed for the conditions, maintaining control of his vehicle, and operating the vehicle in a non-negligent manner.

15.

Defendant Armando Saenz breached his duties by failing to exercise the reasonable care necessary to maintain control of the vehicle and, specifically, the

defective 2005 Cadillac SRX involved in the fatal collision that forms the basis of Plaintiff's Complaint.

16.

Defendant Armando Saenz' negligence was a contributing cause of the injuries, death and damages complained of by Plaintiff herein.

COUNT II
STRICT LIABILITY/PRODUCT LIABILITY
DEFENDANT FORD

17.

At all times relevant to the subject Complaint, *Ford* was responsible for designing, developing, testing, assembling, manufacturing, marketing, and distributing the defective 2004 Ford Explorer. Absent ordinary wear and tear, including foreseeable use, the subject vehicle was in substantially the same condition at the time of the crash as it was when it left *Ford's* possession.

18.

The Explorer is defective and unreasonably dangerous by design when used as marketed by *Ford*. The inherent defects in the design were present at the time the vehicle was manufactured, marketed, and distributed. The defects in the vehicle were a proximate and producing cause of the injuries, death and damages alleged by Plaintiff herein. At all times relevant to the Complaint, *Ford* was in the business of designing, manufacturing, assembling, marketing, testing, and otherwise distributing automobiles. The defective nature of the design of the Explorer included defects in design, stability, handling, marketing, instructions, warning, crashworthiness, rollover resistance and controllability. The defective nature of the vehicle includes the following:

18.01 The Explorer is defective in that the design of the "package", which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of rollover given the uses for which the vehicle was marketed, especially freeway use and special-service use;

18.02 The Explorer is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency turning maneuvers, including while attempting to avoid crashes and dealing with impacts, and does not remain controllable under all operating conditions as required by *Ford* guidelines, including the tendency to over-steer and skate;

18.03 The Explorer is unreasonably dangerous from a stability standpoint because it rolls over instead of sliding when loss of directional control occurs on relatively flat level surfaces during foreseeable steering maneuvers;

18.04 The combination of the above factors creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

18.05 The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable emergency situations and maneuvers that are consistent with *Ford's* efforts to market the vehicle as a "station wagon" replacement for police use, which *Ford* had both actual and constructive knowledge would lead to rollover crashes. *Ford's* knowledge included both actual knowledge based on its test history with SUVs and its research and knowledge of rollovers in foreseeable turning maneuvers and constructive knowledge given its corporate history with respect to SUV designs, and unique and special knowledge of the dangers posed when operated by aggressive special service public servants;

18.06 The vehicle was defectively marketed in that consumers, including public servants, were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying, station-wagon replacement type vehicle when *Ford* knew that this was untrue. In fact, Ford went further by representing that the police package had special or unique qualities that other Explorers did not have that actually enhanced the safety of the vehicles when exposed to emergencies;

18.07 The risk of operating the vehicle as designed outweighed any benefits associated with the design and *Ford* knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries, and knew that rollover crashes were particularly dangerous;

18.08 *Ford* knew that this type vehicle — an SUV — was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds, especially by police officers who oftentimes are presented with dangerous driving situations;

18.09 The Explorer was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system — roof, occupant compartment, safety cell, safety belt system, anti-ejection design, and glazing design — that would effectively provide reasonable protection in the event of a rollover, with or without pre-roll impact. Similarly, the vehicle was designed in such a manner that unique equipment placement in the vehicle posed unique and unreasonable risk of injury to occupants in all forms of crashes. Despite actual knowledge of the unique dangers posed in rollover

crashes, Ford intentionally marketed the Explorer has having special or unique qualities or characteristics that made it safer than other vehicles for public servants;

18.10 Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing, such as pre-tensioners and side airbags or curtains, *Ford* intentionally marketed the vehicle to consumers, including public servants, for use as a freeway, passenger-carrying vehicle, and intentionally led the public to believe that it was safe, stable, and would provide state of the art protection to occupants exposed to extraordinary conditions;

18.11 *Ford* had both actual and constructive knowledge of the existence of safer,

alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

18.12 *Ford* willfully, wantonly, and consciously marketed the Explorer for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.

19.

Ford's engineers have known for over 30 years, from the time of the development of the Bronco II, that the most important vehicle characteristic in maintaining control and reducing SUV propensity for rollover is understeer, especially in transient maneuvers. *FORD* identified understeer as a "first order effect" and the "primary factor influencing rollover propensity."

20.

The problem with an over-steering vehicle, with respect to rollover propensity, is that it can and likely will result in the back end of the vehicle coming around (a loss of control) with the vehicle ending up sideways to its path of travel. The resulting side forces ("lateral acceleration") contribute to rollover.

21.

Ford also recognized that the rollover stability of a vehicle is affected by its "stability index," or "static stability factor", which is the relationship of center of gravity height and the track width of the vehicle. In light of these common control and stability principles, *Ford* adopted a "handling strategy" with respect to the Explorer to "increase understeer in all conditions."

22.

Ford's engineers recommended major safety changes needed for the Explorer to *Ford* management, yet management ignored and vetoed those changes to increase profits on the vehicle. *Ford* engineers recommended, for example, improvements with regards to the Explorer's suspension, reduction in the engine height to lower the center of gravity, and an increase in the track width of the vehicle to make the Explorer more resistant to rollover than the Bronco II and earlier versions of the Explorer.

23.

Ford's knowledge of the critical importance of understeer was not acted upon, however, and *Ford* management rejected the center of gravity and track width recommendations of its engineers that would have made the Explorer more resistant to rollover. *Ford* declined to make the necessary changes so that there would not be any delays in the production of the Explorer, and thus Ford could recoup its $500 million investment as quickly as possible.

24.

Ford addressed the rollover stability problem primarily by recommending lower air pressure in the tires. As set forth in a 1989 development report, after noting that they had investigated variations in tire pressure "as a means to achieving the UN46 (Explorer) ride and handling objective," *Ford's* engineers recommended use of "reductions in tire pressure to meet the program objectives" for both ride and handling. Likewise, since *Ford's* marketing department was recommending larger tires (which reduced the vehicle's stability), *Ford* again put dollars in front of safety and recommended the larger tire, but with reduced air pressure. When it came to creating understeer, *Ford's* engineers again turned to lower tire pressure.

25.

By putting profits and public relations image before safety, *Ford* produced a vehicle -- beginning with the Ford Bronco II and continuing with minor changes -- that was prone to over-steer, going out of control in response to simple accident avoidance maneuvers, and rollover when operated by the ordinary driver.

26.

The Explorer also has dangerously weak roof pillars (which support the roof structure), incapable of maintaining integrity of the safety cell in the event of a

rollover, and thereby leading to the collapse of the roof — towards the passengers' heads — in a rollover crash.

27.

In the subject crash, the defectively weak roof collapsed and directly attributed to the injuries that took Jon Tibbett's life. The Explorer lacked adequate design features in the roof and structure that should have been present given the high propensity for rollover. The vehicle also lacked structural foam, which would also have substantially and feasibly increased the roof strength. *Ford* also failed to equip, as standard equipment, the 2004 Ford Explorer with electronic stability control, a feasible alternative design that would have likely avoided the rollover and injuries in the subject crash.

28.

Ford knew of the propensity of the Ford Explorer to rollover from the mid 1980's when the initial version of the program was approved. *Ford* was aware of the rollover problems of the Jeep CJ5 in the 1970s and 1980s, which were alleviated by simply lowering and widening the design. *Ford* had also experienced similar situations concerning rollover incidents dating back to the Bronco II. It is thus obvious that Ford was aware of the rollover issues concerning the Ford Explorer.

29.

Not only did *Ford's* own testing show that there were unacceptable Explorer rollover problems, but the high number of real world incidents also made *Ford* aware that attention should be directed to this issue. However, *Ford* made no significant attempt to correct the problem despite having the capacity and technology to do so.

30.

A safer alternative design was economically and technologically feasible at the time the product left the control of *Ford*, both with respect to rollover propensity and crash protection.

31.

The defective nature of the vehicle was a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, including his enhanced injuries, and the resulting damages suffered and sought by the Plaintiff herein. *Ford* is strictly liable for supplying the defective and unreasonably dangerous product.

COUNT III
NEGLIGENCE

DEFENDANT *FORD*

32.

At all times relevant to this Complaint, *Ford* was in the business of supplying motor vehicles for use on the public roadways. *Ford* held itself out to the public as having specialized knowledge in the industry. As such, *Ford* owed consumers, including Decedent and Plaintiff, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the Explorer. *Ford* violated this duty by negligently supplying a vehicle that was defective. The negligent acts include but are not limited to the following acts or omissions:

- Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;
- Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;
- Negligently designing and testing the vehicle from an occupant protection standpoint, and then marketing it for special use by public servants knowing full well that the features it represented did not exist in reality;
- Negligently testing of the vehicle from a handling and stability standpoint;
- Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;
- Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;
- Failing to disclose known defects, dangers, and problems to both dealers and the public;
- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;
- Failure to meet or exceed internal corporate guidelines;
- Negligently advertising the vehicle as safe and stable family vehicle and one that was ultra-safe for use by public servants;
- Failing to inform the consumer, including the Plaintiff and Decedent, of the information *Ford* knew about rollover risks, and specifically the Explorer, thus depriving the Plaintiff and Decedent of the right to make a conscious and free choice, and also in failing to disclose known problems in foreign countries in an effort to conceal problems that *Ford* knew about the Explorer from U.S. consumers, including the Plaintiff and Decedent;

- Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of roll sensing, pre-tensioners, side air bag and curtain technology, and integrated seating technology;

- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

- Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;

- Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.

33.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, his enhanced injuries, including his death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT IV
BREACH OF WARRANTY
DEFENDANT FORD

34.

At all times relevant to the complaint, *Ford* was a "merchant" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, Ford breached the warranties of merchantability and fitness for a particular purpose in that the 2004 Explorer was not fit for ordinary use or for the intended use for which it was purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, enhanced injuries, and the resulting damages suffered and sought by the Plaintiff herein. The product was unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

COUNT V
STRICT LIABILITY/PRODUCT LIABILITY
DEFENDANTS *GM-LLC* AND INTEGRITY AUTOMOTIVE

35.

At all times relevant to the present Complaint, *GM-LLC* was responsible for designing, developing, testing, assembling, manufacturing, marketing, and

distributing the defective 2005 Cadillac SRX. Absent foreseeable wear, tear, modifications, and usage, the subject vehicle was in substantially the same condition at the time of the crash as it was when it left *GM-LLC's* possession.

36.

At all relevant times hereto, Defendant Integrity Automotive was engaged in the business of marketing, distribution, sales and service of motorized vehicles in New Mexico, and held itself out as having special knowledge and expertise. Integrity placed the subject defective vehicle into the stream of commerce in a condition that was defective and unreasonably dangerous, including non-approved, low-profile tires and loose tie rods.

37.

Upon information and belief, and at all material times hereto, Defendants *GM-LLC* and Integrity Automotive marketed, distributed, sold and/or serviced the subject 2005 Cadillac SRX, and the Cadillac was in substantially the same condition, with respect to its steering mechanism, handling, maneuverability and stability, as it was when it was initially placed in the stream of commerce by *GM-LLC.*

38.

The Cadillac SRX is defective and unreasonably dangerous by design when used as marketed. The inherent defects in the design were present at the time the vehicle was manufactured, marketed, and distributed. The defects in the vehicle were a proximate and producing cause of the injuries, including the severity of the injuries, death and damages alleged by Plaintiff herein. At all times relevant to the Complaint, *GM-LLC* was in the business of designing, manufacturing, assembling, marketing, testing, and otherwise distributing automobiles. The defective nature of the design of the 2005 Cadillac SRX included defects in design, stability, steering, handling, marketing, instructions, warning, and controllability. The defective nature of the vehicle includes the following:

- The Cadillac SRX is defective from a handling standpoint because it does not remain controllable under all operating conditions as required by *GM-LLC* guidelines;

- The inability to control the vehicle at all times creates an extreme risk of steering and controllability that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

- *GM-LLC* knew that this type vehicle — an SUV — was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds;
- *GM-LLC* had both actual and constructive knowledge of the existence of safer, alternative designs from both a steering and controllability standpoint, including roll sensing, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;
- *GM-LLC* willfully, wantonly, and consciously marketed the Cadillac SRX for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.

39.

By putting profits and public relations image before safety, *GM-LLC* produced a vehicle that was prone to unreasonable steering and controllability, including going out of control in response to simple accident avoidance maneuvers when operated by the ordinary driver in foreseeable circumstances.

40.

GM-LLC failed to equip, as standard equipment, the 2005 Cadillac SRX with adequate and proper control features that would have likely avoided the uncontrollability of the vehicle which contributed to the collision and injuries in the subject crash.

41.

Not only did *GM-LLC's* own testing show that there were unacceptable Cadillac SRX problems, but the high number of real world incidents also made *GM-LLC* aware that attention should be directed to this issue. However, *GM-LLC* made no significant attempt to correct the problem despite having the capacity and technology to do so.

42.

A safer alternative design was economically and technologically feasible at the time the product left the control of *GM-LLC*, both with respect to steering, controllability, and electronic stability control.

43.

The defective nature of the vehicle was a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered

and sought by the Plaintiff herein. Defendants *GM-LLC* and Integrity Automotive are strictly liable for supplying the defective and unreasonably dangerous product.

COUNT VI
NEGLIGENCE
DEFENDANT *GM-LLC*

44.

At all times relevant to this Complaint, *GM-LLC* was in the business of supplying motor vehicles for use on the public roadways. *GM-LLC* held itself out to the public as having specialized knowledge in the industry. As such, *GM-LLC* owed a duty to persons using those vehicles, and persons whom *GM-LLC* reasonably expected to be in the vicinity during the use of those vehicles, including Decedent Jon Tibbetts, to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the 2005 Cadillac SRX. *GM-LLC* violated this duty by negligently supplying a vehicle that was defective. The negligent acts include but are not limited to the following acts or omissions:

- Negligently designing the vehicle from a steering, handling and controllability standpoint given the manner in which it was marketed;
- Negligently designing and testing the vehicle from a steering and controllability standpoint;
- Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;
- Failing to disclose known defects, dangers, and problems to both dealers and the public;
- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;
- Failing to meet or exceed internal corporate guidelines;
- Negligently advertising the vehicle as safe and stable family vehicle;
- Failing to comply with the state of the art in the automotive industry insofar as providing a reasonable electronic stability control system is concerned;
- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to steering, steering linkages, handling and controllability, and/or failing to test appropriately to ensure compliance;

- Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety; and

- Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.

45.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT VII
NEGLIGENCE
DEFENDANT INTEGRITY AUTOMOTIVE

46.

At all relevant times, Defendant Integrity Automotive owed Decedent and Plaintiff a duty of reasonable care. Defendant Integrity Automotive breached that duty of care and was otherwise negligent for the acts complained of herein. The negligence of Defendant Integrity Automotive combined to cause and/or contribute to Decedent's and Plaintiff's resulting injuries, death, losses and damages as set forth more fully herein. The negligence acts of Defendant Integrity Automotive include, but are not limited to the following:

- Negligently marketing the 2005 Cadillac SRX as a safe and stable passenger vehicle given the uses for which it was marketed;

- Failing to adequately inspect, service and equip the vehicle with safe and required equipment;

- Failing to ensure the vehicle was mechanically in good repair before allowing the vehicle to be sold to customers and used upon the roadways and highways open to the general public;

- Failing to disclose known defects, dangers, and problems regarding the vehicle;

- Failing to remove the 22 inch rims and the 265/35R22 tires that were on the vehicle, and then distributing the vehicle in a condition known to be dangerous;

- Failing to retrofit the vehicle with rims and tires specified by the manufacture to ensure and enhance the vehicle's safety; and

- Failing to advise or warn the vehicle's purchasers that size 22 inch rims and 265/35R22 tires were not specified by GM for use on the Cadillac SRX.

47.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT VIII
BREACH OF WARRANTY
DEFENDANTS *GM-LLC* AND INTEGRITY AUTOMOTIVE

48.

At all times relevant to the complaint, Defendants *GM-LLC and* Integrity Automotive were "merchants" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, these defendants breached the warranties of merchantability and fitness for a particular purpose in that the 2005 Cadillac SRX was not fit for ordinary use or for the intended use for which it was purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The product was unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

COUNT IX
NEGLIGENCE
JOHN DOES 1-3

49.

At all relevant times, Defendants John Does 1-3 owed Decedent and Plaintiff a duty of reasonable care. Defendant John Does 1-3 breached that duty of care and were otherwise negligent for the acts complained of herein. The negligence of Defendants John Does 1-3 combined to cause and/or contribute to Decedent's and Plaintiff's resulting injuries, death, losses and damages as set forth more fully herein. The negligent acts of Defendants John Does 1-3 include, but are not limited to the following:

- Failing to adequately inspect, service and equip the 2005 Cadillac SRX vehicle with safe and required equipment;

- Failing to install and fit the vehicle with rims and tires specified by the manufacture to ensure and enhance the vehicle's safety;
- Installing inappropriate rims and tires on Defendant Saenz' SRX, including the 22 inch rims and the 265/35R22 tires that were on the vehicle at the time of the collision;
- Failing to ensure the SRX was mechanically in good repair before allowing the vehicle to be used upon the roadways and highways open to the general public; and
- Failing to advise or warn the vehicle's purchasers and users that size 22 inch rims and 265/35R22 tires were not specified by GM for use on the Cadillac SRX.

50.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT X
BREACH OF WARRANTY
DEFENDANTS JOHN DOES 1-3

51.

At all times relevant to the complaint, Defendants John Does 1-3 were "merchants" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, these defendants breached the warranties of merchantability and fitness for a particular purpose in that the inappropriate 22 inch rims and the 265/35R22 tires that were on the 2005 Cadillac SRX were not fit for ordinary use or for the intended use for which they were purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. These products were unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

DAMAGES
INCLUDING LOSS OF CONSORTIUM

52.

The actions and/or inactions of Defendants *Ford*, *GM-LLC*, Integrity Automotive, Armando Saenz, and John Does 1-3, including the aggravating circumstances attending those acts and/or failures to act, caused and/or contributed to Decedent's serious injuries and death, and the resulting damages therefrom include:

* Conscious pain and suffering;
* Mental anguish and distress,
* Medical expenses;
* Disfigurement and death;
* Funeral and burial expenses;
* Property damages;
* Loss of earnings and earning capacity;
* Loss of life and enjoyment of life; and
* Loss of household services; all for which Plaintiff seeks relief pursuant to the New Mexico Wrongful Death Act and other New Mexico law.

53.

Plaintiff Connie Tibbetts enjoyed a very special marital, familial, loving, care-giving and intimate relationship with her husband Jon Tibbetts.

54.

Plaintiff Connie Tibbetts suffered and will continue to suffer from the emotional distress caused by the loss of society, companionship and sexual relations she enjoyed with her husband, Jon Tibbetts, which was wrongfully taken from her as a result of his tragic death.

55.

The actions and/or inactions of Defendants *Ford*, *GM-LLC*, Integrity Automotive, Armando Saenz, and John Does 1-3, including the aggravating circumstances attending those acts and/or failures to act, caused and/or contributed to Plaintiff's loss of consortium damages, and Plaintiff is entitled to a recovery against each of the Defendants for these damages in an amount to be awarded by the jury herein.

PUNITIVE/EXEMPLARY DAMAGES

56.

In addition to compensatory damages, Plaintiff is seeking punitive damages from Defendants Integrity Automotive, *Ford*, *GM-LLC* and John Does 1-3, because their conduct constitutes reckless, grossly negligent, willful, wanton, malicious

behavior that needs to be punished in order to deter others from participating in similar future misconduct. The acts set forth in this complaint were taken with knowledge of the associated risks to consumers. These defendants took the steps set forth herein in conscious disregard for the potential consequences and under circumstances for which a jury could determine that they willfully, wantonly, recklessly, maliciously, and consciously indifferent to the consequences, endangered human life. These defendants deserve to be punished in a civil forum for the malicious misconduct. The amount of punitive damages to be awarded is within the discretion of the jury.

WHEREFORE, PLAINTIFF prays for judgment for compensatory and punitive damages as set forth in this Complaint, pre- and post-judgment interest, costs and fees in connection with this action, and for any and all other just relief this court may deem appropriate.

Dated this 9th day of June, 2015.

Respectfully submitted,

WILL FERGUSON & ASSOCIATES

By: *_/s/ Robert M. Ortiz_*
ROBERT M. ORTIZ
1720 Louisiana Blvd NE, Suite 100
Albuquerque, New Mexico 87110
(505) 243-5566
And

TURNER & ASSOCIATES, P.A.
By: TAB TURNER
(*Pro Hac Vice Pending*)
Arkansas Bar No. 85158
4705 Somers Avenue, Suite 100
North Little Rock, Arkansas 72116
(501) 791-2277

ATTORNEYS FOR PLAINTIFFS

Exhibit F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No.: 09-50026 (REG)
f/k/a General Motors Corp., *et al.*	:	
	:	
Debtors.	:	(Jointly Administered)

JUDGMENT

For the reasons set forth in the Court's *Decision on Motion to Enforce Sale Order*, entered on April 15, 2015 ("**Decision**"),[1] it is hereby ADJUDGED as follows:

1. The Ignition Switch Plaintiffs and the Ignition Switch Pre-Closing Accident Plaintiffs (collectively, the "**Plaintiffs**") were "known creditors" of the Debtors. The Plaintiffs did not receive the notice of the sale of assets of Old GM to New GM ("**363 Sale**") that due process required.

2. Except with respect to Independent Claims (as herein defined), the Ignition Switch Plaintiffs were not prejudiced by their lack of notice of the 363 Sale, and they thus failed to demonstrate a due process violation with respect to the 363 Sale.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Decision. For purposes of this Judgment, the following terms shall apply: (i) "**Ignition Switch Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from the Ignition Switch in the Subject Vehicles (each term as defined in the *Agreed and Disputed Stipulations of Fact Pursuant to the Court's Supplemental Scheduling Order, Dated July 11, 2014*, filed on August 8, 2014 [Dkt. No. 12826], at 3); (ii) "**Pre-Closing Accident Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM based on an accident or incident that occurred prior to the closing of the 363 Sale; (iii) "**Ignition Switch Pre-Closing Accident Plaintiffs**" shall mean that subset of the Pre-Closing Accident Plaintiffs that had the Ignition Switch in their Subject Vehicles; (iv) "**Non-Ignition Switch Pre-Closing Accident Plaintiffs**" shall mean that subset of Pre-Closing Accident Plaintiffs that are not Ignition Switch Pre-Closing Accident Plaintiffs; and (v) "**Non-Ignition Switch Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from an alleged defect, other than the Ignition Switch, in an Old GM vehicle.

3. The Ignition Switch Pre-Closing Accident Plaintiffs were not prejudiced by their lack of notice of the 363 Sale, and they thus failed to demonstrate a due process violation with respect to the 363 Sale.

4. With respect to the Independent Claims, the Ignition Switch Plaintiffs were prejudiced by the failure to give them the notice of the 363 Sale that due process required. The Ignition Switch Plaintiffs established a due process violation with respect to the Independent Claims. The Sale Order shall be deemed modified to permit the assertion of Independent Claims. For purposes of this Judgment, "**Independent Claims**" shall mean claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct. Nothing set forth herein shall be construed to set forth a view or imply whether or not Ignition Switch Plaintiffs have viable Independent Claims against New GM.

5. Except for the modification to permit the assertion of Independent Claims by the Ignition Switch Plaintiffs, the Sale Order shall remain unmodified and in full force and effect.

6. The Plaintiffs were prejudiced by the failure to receive the notice due process required of the deadline ("**Bar Date**") to file proofs of claim against the Old GM bankruptcy estate. Any Plaintiff may petition the Bankruptcy Court (on motion and notice) for authorization to file a late or amended proof of claim against the Old GM bankruptcy estate. The Court has not determined the extent to which any late or amended proof of claim will ultimately be allowed or allowed in a different amount. But based on the doctrine of equitable mootness, in no event shall assets of the GUC Trust held at any time in the past, now, or in the future (collectively, the "**GUC Trust Assets**") (as defined in the Plan) be used to satisfy any claims of the Plaintiffs, nor will Old GM's Plan be modified with respect to such claims; *provided* that nothing in this

Judgment shall impair any party's rights with respect to the potential applicability of Bankruptcy Code section 502(j) to any claims that were previously allowed or disallowed by the Court. The constraints on recourse from GUC Trust Assets shall not apply to any Ignition Switch Plaintiff, Pre-Closing Accident Plaintiff, or Non-Ignition Switch Plaintiff who had a claim previously allowed or disallowed by the Court, but in no event shall he or she be entitled to increase the amount of any allowed claim without the prior authorization of the Bankruptcy Court or an appellate court following an appeal from the Bankruptcy Court.

7. Any claims and/or causes of action brought by the Ignition Switch Pre-Closing Accident Plaintiffs that seek to hold New GM liable for accidents or incidents that occurred prior to the closing of the 363 Sale are barred and enjoined pursuant to the Sale Order. The Ignition Switch Pre-Closing Accident Plaintiffs shall not assert or maintain any such claim or cause of action against New GM.

8. (a) Subject to the other provisions of this paragraph 8, each Ignition Switch Pre-Closing Accident Plaintiff (including without limitation the Ignition Switch Pre-Closing Accident Plaintiffs identified on Exhibit "A" attached hereto) is stayed and enjoined from prosecuting any lawsuit against New GM.

(b) Within two (2) business days of the entry of this Judgment, New GM shall serve a copy of this Judgment on counsel in the lawsuits identified on Exhibit "A," by e-mail, facsimile, overnight mail or, if none of the foregoing are available, regular mail, with a cover note that states: "The attachment is the Judgment entered by the Bankruptcy Court. Please review the Judgment, including without limitation, the provisions of paragraph 8 of the Judgment."

(c) If counsel for an Ignition Switch Pre-Closing Accident Plaintiff (including, but not limited to, one identified on Exhibit "A") believes that, notwithstanding the Decision and this Judgment, it has a good faith basis to maintain that its lawsuit against New GM should not be stayed, it shall file a pleading with this Court within 17 business days of this Judgment ("**No Stay Pleading**"). The No Stay Pleading shall not reargue issues that were already decided by the Decision, this Judgment, or any other decision, order, or judgment of this Court. If a No Stay Pleading is timely filed, New GM shall have 17 business days to respond to such pleading. The Court will schedule a hearing thereon if it believes one is necessary.

9. Except for Independent Claims and Assumed Liabilities (if any), all claims and/or causes of action that the Ignition Switch Plaintiffs may have against New GM concerning an Old GM vehicle or part seeking to impose liability or damages based in whole or in part on Old GM conduct (including, without limitation, on any successor liability theory of recovery) are barred and enjoined pursuant to the Sale Order, and such lawsuits shall remain stayed pending appeal of the Decision and this Judgment.

10. (a) The lawsuits stayed pursuant to the preceding paragraph shall include those on the attached Exhibit "B." The lawsuits identified on Exhibit "B" include the Pre-Sale Consolidated Complaint.

(b) Within two (2) business days of the entry of this Judgment, New GM shall serve a copy of this Judgment on counsel in the lawsuits identified on Exhibit "B", by e-mail, facsimile, overnight mail or, if none of the foregoing are available, regular mail, with a cover note that states: "The attachment is the Judgment entered by the Bankruptcy Court. Please review the Judgment, including without limitation, the provisions of paragraph 10 of the Judgment."

(c) If a counsel listed on Exhibit "B" believes that, notwithstanding the Decision and this Judgment, it has a good faith basis to maintain that its lawsuit against New GM should not be stayed, it shall file a No Stay Pleading with this Court within 17 business days of this Judgment. The No Stay Pleading shall not reargue issues that were already decided by the Decision and this Judgment, or any other decision or order of this Court. If a No Stay Pleading is timely filed, New GM shall have 17 business days to respond to such pleading. The Court will schedule a hearing thereon if it believes one is necessary.

11. (a) The complaints in the lawsuits listed on the attached Exhibit "C" ("**Hybrid Lawsuits**") include claims and allegations that are permitted under the Decision and this Judgment and others that are not. Accordingly, until and unless the complaint in a Hybrid Lawsuit is (x) amended to assert solely claims and allegations permissible under the Decision and this Judgment (as determined by this or any higher court, if necessary), or (y) is judicially determined (by this or any higher court) not to require amendment, that lawsuit is and shall remain stayed. The Hybrid Lawsuits include the Post-Sale Consolidated Complaint. Within two (2) business days of the entry of this Judgment, New GM shall serve a copy of this Judgment on counsel in the Hybrid Lawsuits, by e-mail, facsimile, overnight mail or, if none of the foregoing are available, regular mail, with a cover note that states: "The attachment is the Judgment entered by the Bankruptcy Court. Please review the Judgment, including without limitation, the provisions of paragraph 11 of the Judgment."

(b) Notwithstanding the stay under the preceding subparagraph, however, the complaints in the actions listed in Exhibit "C" may, if desired, be amended in accordance with the subparagraphs that follow. Subject to the other provisions of this paragraph 11, and unless the applicable complaint already has been dismissed without prejudice pursuant to an order

entered in MDL 2543, each Plaintiff in a Hybrid Lawsuit wishing to proceed at this time may amend his or her complaint on or before June 12, 2015, such that any allegations, claims or causes of action concerning an Old GM vehicle or part seeking to impose liability or damages based on Old GM conduct (including, without limitation, any successor liability theory of recovery) are stricken, and only Independent Claims are pled.

(c) If a counsel listed in the lawsuits on Exhibit "C" believes that, notwithstanding the Decision and this Judgment, it has a good faith basis to maintain that its allegations, claims or causes of action against New GM should not be stricken, it shall file a pleading with this Court within 17 business days of this Judgment ("**No Strike Pleading**"). The No Strike Pleading shall not reargue issues that were already decided by the Decision and Judgment. If a No Strike Pleading is timely filed, New GM shall have 17 business days to respond to such pleading. The Court will schedule a hearing thereon if it believes one is necessary.

(d) If an Ignition Switch Plaintiff fails to either (i) amend his or her respective complaints on or before June 12, 2015, such that all allegations, claims and/or causes of action concerning an Old GM vehicle or part seeking to impose liability or damages based on Old GM conduct (including, without limitation, any successor liability theory of recovery) are stricken, and only Independent Claims are pled, or (ii) timely file a No Strike Pleading with the Court within the time period set forth above, New GM shall be permitted to file with this Court a notice of presentment on five (5) business days' notice, with an attached order ("**Strike Order**") that directs the Ignition Switch Plaintiff to strike specifically-identified allegations, claims and/or causes of action contained in his or her complaint that violate the Decision, this Judgment and/or the Sale Order (as modified by the Decision and this Judgment), within 17 business days of

receipt of the Strike Order.

(e) For any allegations, claims or causes of action of the Ignition Switch Plaintiffs listed on Exhibit "C" that are stricken pursuant to this Judgment (voluntarily or otherwise), (i) the statute of limitations shall be tolled from the date of the amended complaint to 30 days after all appeals of the Decision and Judgment are decided, and (ii) if the Decision and Judgment are reversed on appeal such that the appellate court finds that the Ignition Switch Plaintiffs can make the allegations, or maintain the claims or causes of action, against New GM heretofore stricken pursuant to this Judgment, all of the Ignition Switch Plaintiffs' rights against New GM that existed prior to the striking of such claims or causes of action pursuant to this Judgment shall be reinstated as if the striking of such claims or causes of action never occurred.

(f) Notwithstanding the foregoing, to the extent (but only the extent) acceptable to the MDL Court, the Plaintiff in any lawsuit listed on Exhibit "C" may elect not to amend his or her complaint and may await the outcome of appellate review of this Judgment. If that plaintiff thereafter determines to proceed with his or her lawsuit, the plaintiff's counsel shall provide notice to New GM, and the procedures set forth above shall apply.

12. (a) The lawsuits captioned *People of California v. General Motors LLC, et al.*, No. 30-2014-00731038-CU-BT-CXC (Orange County, Cal.) and *State of Arizona v. General Motors LLC*, No. CV2014-014090 (Maricopa County, Ariz.) (the "**State Lawsuits**") likewise include claims and allegations that are permitted under the Decision and this Judgment and others that are not. Accordingly, until and unless the complaint in a State Lawsuit is (x) amended to assert solely claims and allegations permissible under the Decision and this Judgment (as determined by this or any higher court, if necessary), or (y) is judicially determined (by this or any higher court) not to require amendment, that lawsuit is and shall remain stayed.

Within two (2) business days of the entry of this Judgment, New GM shall serve a copy of this Judgment on counsel in the State Lawsuits, by e-mail, facsimile, overnight mail or, if none of the foregoing are available, regular mail, with a cover note that states: "The attachment is the Judgment entered by the Bankruptcy Court. Please review the Judgment, including without limitation, the provisions of paragraph 12 of the Judgment."

(b) Notwithstanding the stay under the preceding subparagraph, however, the State Lawsuits may, if desired, be amended in accordance with the subparagraphs that follow. Subject to the other provisions of this paragraph 12, and unless the applicable complaint already has been dismissed without prejudice, each Plaintiff in a State Lawsuit ("**State Plaintiff**") wishing to proceed at this time may amend its complaint on or before June 12, 2015, such that any allegations, claims or causes of action concerning an Old GM vehicle or part seeking to impose liability or damages based on Old GM conduct (including, without limitation, any successor liability theory of recovery) are stricken, and only Independent Claims are pled.

(c) If a counsel in a State Lawsuit believes that, notwithstanding the Decision and this Judgment, it has a good faith basis to maintain that its allegations, claims or causes of action against New GM should not be stricken, it shall file a No Strike Pleading with this Court within 17 business days of this Judgment. The No Strike Pleading shall not reargue issues that were already decided by the Decision and Judgment. If a No Strike Pleading is timely filed, New GM shall have 17 business days to respond to such pleading. The Court will schedule a hearing thereon if it believes one is necessary.

(d) If a State Plaintiff fails to either (i) amend its complaint, on or before June 12, 2015, such that all allegations, claims and/or causes of action concerning an Old GM vehicle or part seeking to impose liability or damages based on Old GM conduct (including, without

09-50026-reg Doc 13177 Filed 06/01/15 Entered 06/01/15 15:03:58 Main Document
Pg 9 of 21

limitation, any successor liability theory of recovery) are stricken, and only Independent Claims are pled, or (ii) timely file a No Strike Pleading with the Court within the time period set forth above, New GM shall be permitted to file with this Court a notice of presentment on five (5) business days' notice, with an attached Strike Order that directs such State Plaintiff to strike specifically-identified allegations, claims and/or causes of action contained in its complaint that violate the Decision, this Judgment and/or the Sale Order (as modified by the Decision and Judgment), within 17 business days of receipt of the Strike Order.

(e) For any allegations, claims or causes of action of a State Plaintiff that are stricken pursuant to this Judgment (voluntarily or otherwise), (i) the statute of limitations shall be tolled from the date of the amended complaint to 30 days after all appeals of the Decision and Judgment are decided, and (ii) if the Decision and Judgment are reversed on appeal such that the appellate court finds that the State Plaintiff can make the allegations, or maintain the claims or causes of action, against New GM heretofore stricken pursuant to this Judgment, all of the State Plaintiff's rights against New GM that existed prior to the striking of such allegations, claims or causes of action pursuant to this Judgment shall be reinstated as if their striking never occurred.

(f) Notwithstanding the foregoing, a State Plaintiff may elect not to amend its complaint and may await the outcome of appellate review of this Judgment. If such plaintiff thereafter determines to proceed with its lawsuit, the plaintiff's counsel shall provide notice to New GM, and the procedures set forth above shall apply.

13. (a) The rulings set forth herein and in the Decision that proscribe claims and actions being taken against New GM shall apply to the "Identified Parties"[2] who were heard

[2] "**Identified Parties**" as defined in the Court's Scheduling Order entered on May 16, 2014 (ECF No. 12697), and persons that have asserted Pre-Closing personal injury and wrongful death claims against New GM based on the Ignition Switch Defect (as defined in the Decision).

during the proceedings regarding the Four Threshold Issues and any other parties who had notice of the proceedings regarding the Four Threshold Issues and the opportunity to be heard in them—including, for the avoidance of doubt, the plaintiffs in the *Bledsoe*, *Elliott* and *Sesay* lawsuits listed on Exhibit "C." They shall also apply to any other plaintiffs in these proceedings (including, without limitation, the Non-Ignition Switch Pre-Closing Accident Plaintiffs and Non-Ignition Switch Plaintiffs identified on Exhibit "D" attached hereto), subject to any objection ("**Objection Pleading**") submitted by any such party within 17 business days of the entry of this Judgment. New GM shall file a response to any such Objection Pleading within 17 business days of service. The Court will schedule a hearing thereon if it believes one is necessary. To the extent an issue shall arise in the future as to whether (i) the Non-Ignition Switch Pre-Closing Accident Plaintiffs and Non-Ignition Switch Plaintiffs were known or unknown creditors of the Debtors, (ii) the doctrine of equitable mootness bars the use of any GUC Trust Assets to satisfy late-filed claims of the Non-Ignition Switch Pre-Closing Accident Plaintiffs and Non-Ignition Switch Plaintiffs, or (iii) the Non-Ignition Switch Pre-Closing Accident Plaintiffs or Non-Ignition Switch Plaintiffs were otherwise bound by the provisions of the Sale Order, the Non-Ignition Switch Pre-Closing Accident Plaintiffs or Non-Ignition Switch Plaintiffs shall be required to first seek resolution of such issues from this Court before proceeding any further against New GM and/or the GUC Trust.

(b) Within two (2) business days of the entry of this Judgment, New GM shall serve a copy of this Judgment on counsel for the Non-Ignition Switch Pre-Closing Accident Plaintiffs or Non-Ignition Switch Plaintiffs identified on Exhibit "D", by e-mail, facsimile, overnight mail or, if none of the foregoing are available, regular mail, with a cover note that states: "The attachment is the Judgment entered by the Bankruptcy Court. Please review the

Judgment, including without limitation, the provisions of paragraph 13 of the Judgment."

(c) If a counsel for a Non-Ignition Switch Pre-Closing Accident Plaintiff or Non-Ignition Switch Plaintiff listed on Exhibit "D" believes that, notwithstanding the Decision and this Judgment, it has a good faith basis to maintain that its lawsuit, or certain claims or causes of action contained therein, against New GM should not be dismissed or stricken, it shall file a pleading with this Court within 17 business days of this Judgment ("**No Dismissal Pleading**"). Such No Dismissal Pleading may request, as part of any good faith basis to maintain a lawsuit (or certain claims or causes of action contained therein) against New GM, (i) an opportunity to select one or more designated counsel from among the affected parties to address the Four Threshold Issues with respect to particular defects in the vehicles involved in the accidents or incidents that form the basis for the subject claims, and (ii) the establishment of appropriate procedures (including a briefing schedule and discovery, if appropriate) with respect thereto. If a No Dismissal Pleading is timely filed, New GM shall have 17 business days to respond to such pleading. The Court will schedule a hearing thereon if it believes one is necessary.

(d) If counsel for a Non-Ignition Switch Pre-Closing Accident Plaintiff or a Non-Ignition Switch Plaintiff believes that, notwithstanding the Decision and this Judgment, it has a good faith basis to believe that any of the GUC Trust Assets may be used to satisfy late proofs of claim filed by them that may ultimately be allowed by the Bankruptcy Court, it shall file a pleading with this Court within 17 business days of this Judgment ("**GUC Trust Asset Pleading**"). The GUC Trust Asset Pleading shall not reargue issues that were already decided by the Decision and Judgment. If a GUC Trust Asset Pleading is timely filed, the GUC Trust,

the GUC Trust Unitholders and/or New GM shall have 17 business days to respond to such pleading. The Court will schedule a hearing thereon if it believes one is necessary.

(e) If a Non-Ignition Switch Pre-Closing Accident Plaintiff or Non-Ignition Switch Plaintiff listed on Exhibit “D” fails to timely file a No Dismissal Pleading or a GUC Trust Asset Pleading with the Court within the time period set forth in paragraphs 13(c) and (d) above, New GM, the GUC Trust and/or the GUC Trust Unitholders, as applicable, shall be permitted to file with this Court a notice of presentment on five (5) business days’ notice, with an attached order (“**Dismissal Order**”) that directs the Non-Ignition Switch Pre-Closing Accident Plaintiff or Non-Ignition Switch Plaintiff to dismiss with prejudice its lawsuit, or certain claims or causes of action contained therein that violate the Decision, this Judgment and/or the Sale Order (as modified by the Decision and Judgment), within 17 business days of receipt of the Dismissal Order. For any lawsuit, or any claims or causes of action contained therein, of the Non-Ignition Switch Pre-Closing Accident Plaintiffs or Non-Ignition Switch Plaintiffs that are dismissed pursuant to this Judgment, (i) the statute of limitations shall be tolled from the date of dismissal to 30 days after all appeals of the Decision and Judgment are decided, and (ii) if the Decision and Judgment are reversed on appeal, such that the appellate court finds that the Non-Ignition Switch Pre-Closing Accident Plaintiffs or Non-Ignition Switch Plaintiffs can make the allegations, or maintain the lawsuit or claims or causes of action, against New GM and/or the GUC Trust heretofore dismissed or stricken pursuant to this Judgment, all of the Non-Ignition Switch Pre-Closing Accident Plaintiffs’ or Non-Ignition Switch Plaintiffs’ rights against New GM and/or the GUC Trust that existed prior to the dismissal of their lawsuit or the striking of claims or causes of action pursuant to this Judgment shall be reinstated as if the dismissal or the striking of such claims or causes of action never occurred.

(f) Notwithstanding the provisions of this Paragraph 13, any plaintiff whose lawsuit would otherwise have to be dismissed, in whole or in part, under this Paragraph 13 may elect, by notice filed on ECF and served upon New GM and the GUC Trust (no later than 14 days after the entry of this judgment), to stay the lawsuit instead. Except as the Court may otherwise provide by separate order (entered on stipulation or on motion), the provisions of Paragraph 13 shall then apply to any request for relief from that stay.

14. The Court adopts the legal standard for “fraud on the court” as set forth in the Decision.

15. (a) By agreement of New GM, Designated Counsel for the Ignition Switch Plaintiffs, the GUC Trust, and the GUC Trust Unitholders, and as approved by the Court, no discovery in the Bankruptcy Court was conducted in connection with the resolution of the Four Threshold Issues. The Ignition Switch Pre-Closing Accident Plaintiffs did not challenge the earlier decision not to seek discovery in the Bankruptcy Court in connection with the Bankruptcy Court’s determination of the Four Threshold Issues. New GM, Designated Counsel, the Groman Plaintiffs, the GUC Trust, and the GUC Trust Unitholders developed and submitted to the Court a set of agreed upon stipulated facts. Such parties also submitted to the Bankruptcy Court certain disputed facts and exhibits. The Court decided the Four Threshold Issues on the agreed upon stipulated facts only.

(b) The Court has determined that the agreed-upon factual stipulations were sufficient for purposes of determining the Four Threshold Issues; that none of the disputed facts were or would have been material to the Court’s conclusions as to any of the Four Threshold Issues; and that treating any disputed fact as undisputed would not have affected the outcome or reasoning of the Decision.

(c) The Groman Plaintiffs requested discovery with respect to the Four Threshold Issues but the other parties opposed that request, and the Court denied that request. To the extent the Groman Plaintiffs' discovery request continues, it is denied without prejudice to renewal in the event that after appeal of this Judgment, the discovery they seek becomes necessary or appropriate.

(d) For these reasons (and others), the findings of fact in the Decision shall apply only for the purpose of this Court's resolution of the Four Threshold Issues, and shall have no force or applicability in any other legal proceeding or matter, including without limitation, MDL 2543. Notwithstanding the foregoing, in all events, however, the Decision and Judgment shall apply with respect to (a) the Court's interpretation of the enforceability of the Sale Order, and (b) the actions of the affected parties that are authorized and proscribed by the Decision and Judgment.

16. The Court shall retain exclusive jurisdiction, to the fullest extent permissible under law, to construe or enforce the Sale Order, this Judgment, and/or the Decision on which it was based. For the avoidance of doubt, except as otherwise provided in this Judgment, the Sale Order remains fully enforceable, and in full force and effect. This Judgment shall not be collaterally attacked, or otherwise subjected to review or modification, in any Court other than this Court or any court exercising appellate authority over this Court.

17. Count One of the amended complaint ("**Groman Complaint**") filed in *Groman et al v. General Motors LLC* (Adv. Proc. No. 14-01929 (REG)) is dismissed with prejudice. The remaining counts of the Groman Complaint that deal with the "fraud on the court" issue are deferred and stayed until 30 days after all appeals of the Decision and Judgment are decided. With respect to Count One of the Groman Complaint, (i) the statute of limitations shall be tolled

from the date of dismissal of Count One to 30 days after all appeals of the Decision and Judgment are decided, and (ii) if the Decision and Judgment are reversed or modified on appeal such that the appellate court finds that the Groman Plaintiffs can maintain the cause of action in Count One of the Groman Complaint heretofore dismissed pursuant to this Judgment, the Groman Plaintiffs' rights against New GM that existed as of the dismissal of Count One shall be reinstated as if the dismissal of Count One never occurred.

18. (a) New GM is hereby authorized to serve this Judgment and the Decision upon any additional party (or his or her attorney) (each, an "**Additional Party**") that commences a lawsuit and/or is not otherwise on Exhibits "A" through "D" hereto (each, an "**Additional Lawsuit**") against New GM that would be proscribed by the Sale Order (as modified by the Decision and this Judgment). Any Additional Party shall have 17 business days upon receipt of service by New GM of the Decision and Judgment to dismiss, without prejudice, such Additional Lawsuit or the allegations, claims or causes of action contained in such Additional Lawsuit that would violate the Decision, this Judgment, or the Sale Order (as modified by the Decision and this Judgment).

(b) If any Additional Party has a good faith basis to maintain that the Additional Lawsuit or certain allegations, claims or causes of action contained in such Additional Lawsuit should not be dismissed without prejudice, such Additional Party shall, within 17 business days upon receipt of the Decision and Judgment, file with this Court a No Dismissal Pleading explaining why such Additional Lawsuit or certain claims or causes of action contained therein should not be dismissed without prejudice. The No Dismissal Pleading shall not reargue issues that were already decided by the Decision and Judgment. New GM shall file a response to the No Dismissal Pleading within 17 business days of service of the No Dismissal Pleading. The

Court will schedule a hearing thereon if it believes one is necessary.

(c) If an Additional Party fails to either (i) dismiss without prejudice the Additional Lawsuit or the claims and/or causes of action contained therein that New GM asserts violates the Decision, Judgment, and/or Sale Order (as modified by the Decision and this Judgment), or (ii) timely file a No Dismissal Pleading with the Court within the time period set forth above, New GM shall be permitted to file with this Court a notice of presentment on five (5) business days' notice, with an attached Dismissal Order that directs the Additional Party to dismiss without prejudice the Additional Lawsuit or the claims and/or causes of action contained therein that violate the Decision, this Judgment and/or the Sale Order (as modified by the Decision and this Judgment), within 17 business days of receipt of the Dismissal Order. With respect to any lawsuit that is dismissed pursuant to this paragraph, (i) the statute of limitations shall be tolled from the date of dismissal of such lawsuit to 30 days after all appeals of the Decision and Judgment are decided, and (ii) if the Decision and Judgment are reversed on appeal such that the appellate court finds that the Additional Party can maintain the lawsuit heretofore dismissed pursuant to this Judgment, the Additional Party's rights against New GM that existed as of the dismissal of the lawsuit shall be reinstated as if the dismissal of the lawsuit never occurred.

(d) For the avoidance of doubt, nothing in this paragraph 18 shall apply to the Amended Consolidated Complaint to be filed in MDL 2543 on or before June 12, 2015.

Dated: New York, New York
June 1, 2015

s/ Robert E. Gerber
United States Bankruptcy Judge

09-50026-reg Doc 13177 Filed 06/01/15 Entered 06/01/15 16:13:57 Main Document
Pg 18 of 21

Exhibit "A": Complaints Alleging Pre-Closing Ignition Switch Accidents To Be Stayed

Bachelder, et al. v. General Motors LLC, MDL No. 1:15-cv-00155-JMF (S.D.N.Y.)[3]

Betancourt Vega v. General Motors LLC, et al., No. 3:15-cv-01245-DRD (D.P.R.) (MDL No. 1:15-cv-02638)

Bledsoe, et al. v. General Motors LLC, MDL No. 1:14-cv-07631-JMF (S.D.N.Y.)[4]

Boyd, et al. v. General Motors LLC, No. 4:14-cv-01205-HEA (E.D. Mo.) (MDL No. 1:14-cv-08385)[5]

Doerfler-Bashucky v. General Motors LLC, et al., No. 5:15-cv-00511-GTS-DEP (N.D.N.Y.)

Edwards, et al. v. General Motors LLC, MDL No. 1:14-cv-06924-JMF (S.D.N.Y.)[6]

Johnston-Twining v. General Motors LLC, et al., No. 3956 (Philadelphia County, Pa.)

Meyers v. General Motors LLC, No. 1:15-cv-00177-CCC (M.D. Pa.)

Occulto v. General Motors Co., et al., No. 15-cv-1545 (Lackawanna County, Pa.)

Scott v. General Motors Company, et al., No. 8:15-cv-00307-JDW-AEP (M.D. Fla.) (MDL No. 1:15-cv-01790)

Vest v. General Motors LLC, et al., No. 1:14-cv-24995-DAF (S.D. W.Va.) (MDL No. 1:14-cv-07475)

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[3] The *Bachelder* complaint includes both Ignition Switch and non-Ignition Switch Pre-Closing Accident vehicles subject to the Judgment. Accordingly, it is listed both on Exhibits "A" and "D."

[4] The *Bledsoe* complaint includes both Ignition Switch and non-Ignition Switch Pre-Closing Accident vehicles subject to the Judgment. Accordingly, it is listed both on Exhibits "A" and "D." In addition, the *Bledsoe* complaint includes economic loss claims regarding Old GM conduct and vehicles and, therefore, also appears on Exhibit "C."

[5] The *Boyd* complaint contains allegations regarding both a Pre-Closing ignition switch accident and one or more Post-Closing ignition switch accidents. To the extent the complaint concerns one or more Post-Closing ignition switch accidents, those portions of the *Boyd* complaint that assert Product Liabilities (as defined in the Sale Agreement) based on a Post-Closing ignition switch accident are not subject to the Judgment.

[6] The *Edwards* complaint includes both Ignition Switch and non-Ignition Switch Pre-Closing Accident vehicles subject to the Judgment. Accordingly, it is listed both on Exhibits "A" and "D."

09-50026-reg Doc 13177 Filed 06/01/15 Entered 06/01/15 16:13:57 Main Document
Pg 18 of 21

<u>Exhibit "B": Economic Loss Complaints To Be Stayed</u>

Hailes, et al. v. General Motors LLC, et al., No. 15PU-CV00412 (Pulaski County, Mo.)

In re General Motors LLC Ignition Switch Litigation, 14-MD-2543, *Consolidated Class Action Complaint Against New GM For Recalled Vehicles Manufactured By Old GM and Purchased Before July 11, 2009*

Exhibit "C": Complaints Containing Particular Allegations And/Or Claims Barred By Sale Order To Be Stricken

Post-Sale Personal Injury/Wrongful Death Complaints With Economic Loss Claims To Be Stricken:

Ackerman v. General Motors Corp., et al., No. MRS-L-2898-14 (Morris County, N.J.)

Austin, et al. v. General Motors LLC, No. 2015-L- 000026 (St. Clair County, Ill.)

Berger, et al. v. General Motors LLC, No. 9241/2014 (Kings County, N.Y.)

Casey, et al. v. General Motors LLC, et al., No. 2014-54547 (Texas MDL)

Colarossi v. General Motors, et al., No. 14-22445 (Suffolk County, N.Y.)

Dobbs v. General Motors LLC, et al., No. 49D051504PL010527 (Marion County, Ind.)

Felix, et al. v. General Motors LLC, No. 1422-CC09472 (City of St. Louis, Mo.)

Gable, et al. v. Walton, et al., No. 6737 (Lauderdale County, Tenn.)

Goins v. General Motors LLC, et al., No. 2014-CI40 (Yazoo County, Miss.)

Grant v. General Motors LLC, et al., No. 2014CV02570MG (Clayton County, Ga.)

Green v. General Motors LLC, et al., No. 15-144964-NF (Oakland County, Mich.)

Hellems v. General Motors LLC, No. 15-459-NP (Eaton County, Mich.)

Hinrichs v. General Motors LLC, et al., No. 15-DCV-221509 (Texas MDL)

Jackson v. General Motors LLC, et al., No. 2014-69442 (Texas MDL)

Largent v. General Motors LLC, et al., No. 14-006509-NP (Wayne County, Mich.)

Licardo v. General Motors LLC, No. 03236 (Fulton County, N.Y.)

Lincoln, et al. v. General Motors LLC, No. 2015-0449-CV (Steuben County, N.Y.)

Lucas v. General Motors LLC, et al., No. 15-CI-00033 (Perry County, Ky.)

Miller v. General Motors LLC, et al., No. CACE-15-002297 (Broward County, Fla.)

Mullin, et al. v. General Motors LLC, et al., No. BC568381 (Los Angeles County, Cal.)

Nelson v. General Motors LLC, et al., No. D140141 (Texas MDL)

Petrocelli v. General Motors LLC, et al., No. 14-17405 (Suffolk County, N.Y.)

Polanco, et al. v. General Motors LLC, et al., No. CIVRS1200622 (San Bernardino County, Cal.)

Quiles v. Catsoulis, et al., No. 702871/14 (Queens County, N.Y.)

Quintero v. General Motors LLC, et al., No. 15-995 (Orleans Parish, La.)

Shell, et al. v. General Motors LLC, No. 1522-CC00346 (City of St. Louis, Mo.)

Solomon v. General Motors LLC, No. 15A794-1 (Cobb County, Ga.)

Spencer v. General Motors LLC, et al., No. D-1-GN-14-001337 (Texas MDL)

Szatkowski, et al. v. General Motors LLC, et al., No. 2014-08274-0 (Luzerne County, Pa.)

Tyre v. General Motors LLC, et al., No. GD-14-010489 (Allegheny County, Pa.)

Wilson v. General Motors LLC, et al., No. 2014-29914 (Texas MDL)

Post-Sale Economic Loss Complaints With Old GM Allegations/Claims To Be Stricken:

Bledsoe, et al. v. General Motors LLC, MDL No. 1:14-cv-07631-JMF (S.D.N.Y.)

Elliott, et al. v. General Motors LLC, No. 1:14-cv-00691-KBJ (D.D.C.)
(MDL No. 1:14-cv-08382)

Sesay, et al. v. General Motors LLC, et al., MDL No.1:14-cv-06018-JMF (S.D.N.Y.)

In re General Motors LLC Ignition Switch Litigation, 14-MD-2543, *Consolidated Complaint Concerning All GM-Branded Vehicles That Were Acquired July 11, 2009 or Later*

Exhibit "D": Non-Ignition Switch Complaints Subject to the Judgment

Personal Injury/Wrongful Death Complaints:

Abney, et al. v. General Motors LLC, MDL No. 1:14-cv-05810-JMF (S.D.N.Y.)[7]

Bachelder, et al. v. General Motors LLC, MDL No. 1:15-cv-00155-JMF (S.D.N.Y.)

Bacon v. General Motors LLC, MDL No. 1:15-cv-00918-JMF (S.D.N.Y.)

Edwards, et al. v. General Motors LLC, MDL No. 1:14-cv-06924-JMF (S.D.N.Y.)

Phillips-Powledge v. General Motors LLC, No. 3:14-cv-00192 (S.D. Tex.)
(MDL No. 1:14-cv-08540)

Pillars v. General Motors LLC, No. 1:15-cv-11360-TLL-PTM (E.D. Mich.)

Williams, et al. v. General Motors LLC, No. 5:15-cv-01070-EEF-MLH (W.D. La.)
(MDL No. 1:15-cv-03272)

Economic Loss Complaints:

Bledsoe, et al. v. General Motors LLC, MDL No. 1:14-cv-07631-JMF (S.D.N.Y.)

Elliott, et al. v. General Motors LLC, No. 1:14-cv-00691-KBJ (D.D.C.)
(MDL No. 1:14-cv-08382)

Sesay, et al. v. General Motors LLC, et al., MDL No.1:14-cv-06018-JMF (S.D.N.Y.)

Watson, et al. v. General Motors LLC, et al., No. 6:14-cv-02832 (W.D. La.)

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[7] The *Abney* complaint includes a non-Ignition Switch Pre-Closing Accident vehicle subject to the Judgment.

Exhibit G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---x		
In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	Case No.: 09-50026 (REG)
	:	
Debtors.	:	(Jointly Administered)
---x		

JUDGMENT

For the reasons set forth in the Court's *Decision on Imputation, Punitive Damages, and Other No-Strike and No-Dismissal Pleadings Issues*, entered on November 9, 2015 [Dkt. No. 13533] ("**Decision**");[1] and pursuant to the Court's "gatekeeper" role deciding what claims and allegations may be asserted by plaintiffs under the Sale Order, April Decision and June Judgment, deciding issues of bankruptcy law, but minimizing its role in deciding issues better decided by the nonbankruptcy courts adjudicating plaintiffs' claims, it is hereby ORDERED AND ADJUDGED as follows:[2]

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Decision. For purposes of this Judgment, the following terms shall apply: (i) "**Ignition Switch Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from the Ignition Switch in the Subject Vehicles (each term as defined in the *Agreed and Disputed Stipulations of Fact Pursuant to the Court's Supplemental Scheduling Order, Dated July 11, 2014*, filed on August 8, 2014 [Dkt. No. 12826], at 3); (ii) "**Non-Ignition Switch Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from an alleged defect, other than the Ignition Switch, in an Old GM Vehicle (as herein defined); (iii) "**Pre-Closing Accident Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM based on an accident or incident that first occurred prior to the closing of the 363 Sale; and (iv) "**Post-Closing Accident Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM based on an accident or incident that occurred after the closing of the 363 Sale.

The term "**Economic Loss Plaintiffs**" as used on page 7 of the Decision shall be changed to "Ignition Switch Plaintiffs."

[2] Any ruling set forth in this Judgment that refers to a particular lawsuit, complaint and/or plaintiff shall apply equally to all lawsuits, complaints and plaintiffs where such ruling may be applicable.

09-50026-reg Doc 13563-4 Filed 11/04/15 Entered 11/04/15 13:13:54 Main Document
Pg 2 of 14

A. Imputation

1. Knowledge of New GM personnel, whenever acquired, may be imputed to New GM if permitted under nonbankruptcy law.

2. Knowledge of Old GM personnel may not be imputed to New GM based on any type of successorship theory.

3. With respect to Product Liability Claims assumed by New GM under the Sale Order, to the extent knowledge of Old GM personnel is permitted to be imputed to Old GM under nonbankruptcy law, such knowledge may be imputed to New GM.

4. With respect to Independent Claims,[3] knowledge of Old GM may be imputed to New GM, if permitted by nonbankruptcy law, to the extent such knowledge was "inherited" from Old GM if such information (a) was actually known to a New GM employee (*e.g.*, because it is the knowledge of the same employee or because it was communicated to a New GM employee), or (b) could be ascertained from New GM's books and records, even if such books and records were transferred by Old GM to New GM as part of the 363 Sale and, therefore, first came into existence before the 363 Sale. Accordingly, allegations in pleadings starting with "New GM knew…" or "New GM was on notice that…" are permissible. For causes of action where nonbankruptcy law permits imputation of knowledge to New GM using the above principles, it is possible for such knowledge, depending on the specific circumstances, to be imputed to New GM as early as the first day of its existence.

5. Imputation of knowledge to New GM turns on application of applicable nonbankruptcy law to the specifics and context of the factual situation and the particular purpose

[3] "Independent Claim" shall mean a claim or cause of action asserted against New GM that is based solely on New GM's own independent post-Closing acts or conduct. Independent Claims do not include (a) Assumed Liabilities, or (b) Retained Liabilities, which are any Liabilities that Old GM had prior to the closing of the 363 Sale that are not Assumed Liabilities.

09-50026-reg Doc 13563 Filed 12/01/15 Entered 12/01/15 16:57:58 Main Document
Pg 4 of 14

for which imputation is sought, and it must be based on identified individuals or identified documents. The extent to which plaintiffs must identify specific matters alleged to be known, by whom and by what means, and the legal ground rules necessary to establish imputation as a matter of nonbankruptcy law are questions for the nonbankruptcy courts hearing plaintiffs' claims and allegations to decide. By reason of this Court's limited gatekeeper role, this Court will not engage in further examination of whether particular allegations may be imputed to New GM, beyond the extent to which it has done so in the Decision and this Judgment. The application of the general principles included in this Judgment and the Decision to determine the propriety of imputation in particular contexts in particular cases is up to the judges hearing those cases.

B. <u>Punitive Damages and Related Issues</u>

6. New GM did not contractually assume liability for punitive damages from Old GM. Nor is New GM liable for punitive damages based on Old GM conduct under any other theories, such as by operation of law. Therefore, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM.

7. A claim for punitive damages with respect to a post-Sale accident involving vehicles manufactured by Old GM with the Ignition Switch Defect may be asserted against New GM to the extent—but only to the extent—it relates to an otherwise viable Independent Claim and is based solely on New GM conduct or knowledge, including (a) knowledge that can be imputed to New GM under the principles set forth in the Decision and this Judgment (and under nonbankruptcy law), and (b) information obtained by New GM after the 363 Sale. The extent to which any such claim is "viable" shall be determined under nonbankruptcy law by the

nonbankruptcy court presiding over that action. Except as expressly stated in this Judgment, this Court expresses no view as to whether any claim is viable.

8. Claims for punitive damages may be asserted in actions based on post-Sale accidents involving vehicles manufactured by Old GM with the Ignition Switch Defect to the extent the claim is premised on New GM action or inaction after it was on notice of information "inherited" by New GM, or information developed by New GM post-Sale.

9. Claims for punitive damages involving New GM manufactured vehicles were never foreclosed under the Sale Order, and remain permissible. The underlying allegations and evidence used to support such claims for punitive damages are subject only to the limitations, if any, provided by nonbankruptcy law.

10. Claims for punitive damages relating to post-Sale Non-Product Liabilities actions involving personal injuries suffered in vehicles manufactured by Old GM with the Ignition Switch Defect may be asserted to the extent, but only the extent, they are premised on New GM knowledge and conduct, including "inherited" knowledge and knowledge acquired after the Sale.

11. Claims for punitive damages relating to post-Sale Non-Product Liabilities actions involving personal injuries suffered in vehicles manufactured by New GM are not subject to the Sale Order and may proceed. The underlying allegations and evidence used to support such claims for punitive damages are subject only to the limitations, if any, provided by nonbankruptcy law.

12. Claims for punitive damages asserted in economic loss actions involving vehicles manufactured by Old GM with the Ignition Switch Defect cannot be asserted except for any that might be recoverable in connection with Independent Claims, and then based only on New GM knowledge and conduct. The determination whether such an Independent Claim can be

adequately pled is a question of nonbankruptcy law and is left to the nonbankruptcy judge(s) hearing the claims.

13. Claims for punitive damages asserted in economic loss actions involving vehicles manufactured by New GM are not subject to the Sale Order and may proceed. The underlying allegations and evidence used to support such claims for punitive damages are subject only to the limitations, if any, provided by nonbankruptcy law.

C. Particular Allegations, Claims and Causes of Actions in Complaints

14. Plaintiffs of two types—1) plaintiffs whose claims arise in connection with vehicles without the Ignition Switch Defect, and 2) Pre-Closing Accident Plaintiffs—are not entitled to assert Independent Claims against New GM with respect to vehicles manufactured and first sold by Old GM (an "**Old GM Vehicle**"). To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015 [Dkt. No. 13177] ("**June Judgment**").

15. Claims of any type against New GM that are based on vehicles manufactured by New GM are not affected by the Sale Order and may proceed in the nonbankruptcy court where they were brought.

16. Allegations that speak of New GM as the successor of Old GM (e.g. allegations that refer to New GM as the "successor of," a "mere continuation of," or a "de facto successor of" of Old GM) are proscribed by the Sale Order, April Decision and June Judgment, and complaints that contain such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

17. Allegations that do not distinguish between Old GM and New GM (*e.g.*, referring to "GM" or "General Motors"), or between Old GM vehicles and New GM vehicles (*e.g.,* referring to "GM-branded vehicles"), or that assert that New GM "was not born innocent" (or any substantially similar phrase or language) are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment. Notwithstanding the foregoing, (i) references to "GM-branded vehicles" may be used when the context is clear that the reference can only refer to New GM, and does not blend the periods during which vehicles were manufactured by Old GM and New GM; and (ii) complaints may say, without using code words as euphemisms for imposing successor liability, or muddying the distinctions between Old GM and New GM, that New GM purchased the assets of Old GM; that New GM assumed *Product Liabilities* from Old GM; and that New GM acquired specified knowledge from Old GM.

18. Allegations that allege or suggest that New GM manufactured or designed an Old GM Vehicle, or performed other conduct relating to an Old GM Vehicle before the Sale Order, are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

D. <u>Claims in the Bellwether Complaints and MDL 2543</u>

19. Claims with respect to Old GM Vehicles that are based on fraud (including, but not limited to, actual fraud, constructive fraud, fraudulent concealment, fraudulent misrepresentation, or negligent misrepresentation) or consumer protection statutes are not included within the definition of Product Liabilities, and therefore do not constitute Assumed

Liabilities, because (a) they are not for "death" or "personal injury", and their nexus to any death or personal injury that might thereafter follow is too tangential, and (b) they are not "caused by motor vehicles." The Court expresses no view whether such claims may, however, constitute viable Independent Claims against New GM if they are based on New GM knowledge or conduct.

20. The Court expresses no view as to whether, as a matter of nonbankruptcy law, failure to warn claims in connection with Old GM Vehicles are actionable against New GM, or whether New GM has a duty related thereto. A court other than this Court can make that determination for Post-Closing Accident Claims.

21. A duty to recall or retrofit is not an Assumed Liability, and New GM is not responsible for any failures of Old GM to do so. But whether an Independent Claim can be asserted that New GM had a duty to recall or retrofit an Old GM Vehicle with the Ignition Switch Defect is a question of nonbankruptcy law that can be determined by a court other than this Court.

22. Whether New GM had a duty, enforceable in damages to vehicle owners, to notify people who had previously purchased Old GM Vehicles of the Ignition Switch Defect is an issue to be determined by a court other than this Court.

23. Under the principles in this Judgment and the Decision, the determination of whether claims asserted in complaints filed by Ignition Switch Plaintiffs (including the MDL Consolidated Complaint filed in MDL 2543), or complaints filed by Post-Closing Accident Plaintiffs (including the Bellwether Complaints filed in MDL 2543) with the Ignition Switch Defect, are Independent Claims that may properly be asserted against New GM, or Retained Liabilities of Old GM, can be made by nonbankruptcy courts overseeing such lawsuits, *provided*

however, such plaintiffs may not assert allegations of Old GM knowledge or seek to introduce evidence of Old GM's knowledge in support of such Independent Claims (except to the extent the Imputation principles set forth in the Decision and this Judgment are applicable).

E. Claims in Complaints Alleging New GM is Liable for Vehicle Owners' Failure to File Proofs of Claim Against Old GM

24. Claims that allege that New GM is liable in connection with vehicle owners' failure to file proofs of claim in the Old GM bankruptcy case are barred and enjoined by the Sale Order, April Decision and June Judgment, and shall not be asserted against New GM.

F. The States Complaints

25. New GM shall not be liable to the States for any violations of consumer protection statutes that took place before the 363 Sale. Whether New GM can be held liable to the States for New GM's sale of vehicles that post-date the 363 Sale is a matter of nonbankruptcy law that may be decided by nonbankruptcy courts overseeing such cases. To the extent nonbankruptcy law imposes duties at the time of a vehicle's sale, and a claim relates to the sale of an Old GM Vehicle other than one sold as "certified" after the 363 Sale, claims premised on a breach of such duties are barred by the Sale Order, April Decision and June Judgment as against New GM.

26. With respect to the California complaint, the rulings included in this Judgment and the Decision apply. By way of example, the allegations relating to Old GM conduct in paragraphs 46-54, 58-60, 71, 95-96, 112-114, 189-190 and 200-201 violate the Sale Order, April Decision and June Judgment. Paragraphs 192, 195, 196, 198, 199, 203-206 and 211 do not say whether they make reference to Old GM or New GM and must be clarified. However, allegations contained in paragraphs 9, 11, 16, 18, 22, 32, 43, 44 and 45, for example, are benign.

The California Action shall remain stayed until the complaint is amended to be consistent with the Decision and this Judgment.

27. With respect to the Arizona complaint, the rulings included in this Judgment and the Decision apply. By way of example, (i) the allegation in paragraph 19 that New GM "was not born innocent" is impermissible and violates the Sale Order, April Decision and June Judgment; (ii) the allegations relating solely to Old GM conduct in paragraphs 92, 93, and 357 violate the Sale Order, April Decision and June Judgment; (iii) the allegations that do not clearly relate solely to New GM conduct in paragraphs 140-180, 289, 290-310 violate the Sale Order, April Decision and June Judgment; and (iv) the allegation in paragraph 136 that knowledge of Old GM is "directly attributable" to New GM violates the Sale Order, April Decision and June Judgment (and is false as a matter of law). Nevertheless, the allegations in paragraphs 19 (other than as described above), 81, 135, 137, 138, 139, 335 and 499, for example, are benign. The Arizona Action shall remain stayed until the complaint is amended to be consistent with the Decision and this Judgment.

G. <u>The Peller Complaints</u>

28. With respect to the Peller Complaints, the Ignition Switch Plaintiffs may assert claims based on alleged duties of New GM relating to post-Sale events relating to Old GM Vehicles to the extent they are actionable as matters of nonbankruptcy law (to be decided by nonbankruptcy courts), *provided however*, the Peller Complaints shall remain stayed unless and until they are amended (i) to remove claims that rely on Old GM conduct as the predicate for claims against New GM, (ii) to comply with the applicable provisions of the Decision and this Judgment (including those with respect to claims that fail to distinguish between Old GM and New GM), and (iii) to strike any purported Independent Claims by Non-Ignition Switch

Plaintiffs. To the extent the Peller Complaints assert claims against New GM based on New GM manufactured vehicles, such claims are not proscribed by the Sale Order, April Decision and June Judgment.

H. <u>Other Complaints</u>

(1) "Failure to Recall/Retrofit Vehicles"

29. Obligations, if any, that New GM had to recall or retrofit Old GM Vehicles were not Assumed Liabilities, and New GM is not responsible for any failures of Old GM to do so. But whether New GM had an independent duty to recall or retrofit previously sold Old GM Vehicles that New GM did not manufacture is a question of nonbankruptcy law that may be decided by the nonbankruptcy court hearing that action.

30. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law for such Old GM Vehicles, but allows this claim to be asserted by the Ignition Switch Plaintiffs and the Post-Closing Accident Plaintiffs (such as has been asserted by the plaintiff in *Moore v. Ross*) with the Ignition Switch Defect, leaving determination of whether there is the requisite duty under nonbankruptcy law to the nonbankruptcy court hearing that action.

(2) "Negligent Failure to Identify Defects or Respond to Notice of a Defect"

31. Obligations, if any, that New GM had to identify or respond to defects in previously sold Old GM Vehicles were not Assumed Liabilities, and New GM is not responsible for any failures of Old GM to do so. But whether New GM had an independent duty to identify or respond to defects in previously sold Old GM Vehicles that New GM did not manufacture is a question of nonbankruptcy law that may be decided by the nonbankruptcy court hearing that action.

09-50026-reg Doc 13563 Filed 12/01/15 Entered 12/01/15 16:18:58 Main Document Pg 11 of 13

32. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law for such Old GM Vehicles, and allows this claim to be asserted by the Ignition Switch Plaintiffs and the Post-Closing Accident Plaintiffs with the Ignition Switch Defect, leaving determination of whether there is the requisite duty under nonbankruptcy law to the court hearing that action.

(3) "Negligent Infliction of Economic Loss and Increased Risk"

33. Claims that New GM had a duty to warn consumers owning Old GM Vehicles of the Ignition Switch Defect but instead concealed it, and by doing so, the economic value of the Ignition Switch Plaintiffs' vehicles was diminished (such as been raised by the plaintiffs in *Elliott* and *Sesay*) were not Assumed Liabilities, and New GM is not responsible for any failures of Old GM to do so. But whether New GM had an independent duty to warn consumers owning previously sold Old GM Vehicles that New GM did not manufacture of the Ignition Switch Defect is a question of nonbankruptcy law to be decided by the nonbankruptcy court hearing the underlying action. The Court does not decide whether there is the requisite duty on the part of New GM under nonbankruptcy law to warn for such Old GM Vehicles with the Ignition Switch Defect. Thus, the Court allows this claim to be asserted by the Ignition Switch Plaintiffs to the extent, but only the extent, that New GM had an independent "duty to warn" owners of Old GM Vehicles of the Ignition Switch Defect, as relevant to situations *in which no one is alleged to have been injured* by that failure, but where the Old GM Vehicles involved are alleged to have lost value as a result. Determination of whether there is the requisite duty is left to the court hearing the underlying actions.

(4) "Civil Conspiracy"

34. Claims that New GM was involved "in a civil conspiracy with others to conceal the alleged ignition switch defect" were not Assumed Liabilities. The extent to which they might constitute Independent Claims requires a determination of nonbankruptcy law, which determination this Court leaves, with respect to vehicles previously manufactured and sold by a different entity, to the nonbankruptcy court hearing the underlying action.

(5) "Section 402B—Misrepresentation by Seller"

35. Claims based on "Section 402B-Misrepresentation by Seller" fall within the definition of assumed Product Liabilities, and such claims may be asserted against New GM.

(6) Claims Based on Pre-Closing Accidents

36. All claims brought by Pre-Closing Accident Plaintiffs (like the *Coleman* action in the Eastern District of Louisiana) seeking to hold New GM liable, under any theory of liability, for accidents or incidents that first occurred prior to the closing of the 363 Sale are barred and enjoined pursuant to the Sale Order, April Decision and June Judgment. The Pre-Closing Accident Plaintiffs shall not assert or maintain such claims against New GM.

I. <u>Jurisdiction</u>

37. The Court shall retain jurisdiction, to the fullest extent permissible under law, to construe or enforce the Sale Order, this Judgment, and the Decision on which it was based; *provided, however*, that the nonbankruptcy courts hearing the plaintiffs' claims shall have the authority to construe and implement the Decision and this Judgment, and to apply the principles laid out in the Decision and this Judgment, with respect to the particular cases before them. This Judgment shall not be collaterally attacked, or otherwise subjected to review or modification, in any Court other than this Court or any court exercising appellate authority over this Court.

J. <u>Amended Complaints</u>

38. For the avoidance of any doubt, complaints amended in compliance with this Judgment may be filed in the non-bankruptcy courts with jurisdiction over them, without violating any automatic stay or injunction or necessitating further Bankruptcy Court approval to file same.

K. <u>Prior Orders</u>

39. For the avoidance of doubt, except as provided in the June Judgment and the April Decision, the provisions of the Sale Order shall remain unmodified and in full force and effect, including, without limitation, paragraph AA of the Sale Order, which states that, except with respect to Assumed Liabilities, New GM is not liable for the actions or inactions of Old GM.

L. <u>Earlier Decisions as Interpretive Aids</u>

40. To the extent, if any, that this Judgment fails, in whole or in part, to address an issue or is ambiguous, the Court's statements in the April Decision and the Decision may be used as interpretive aids.

Dated: New York, New York
December 4, 2015

s/Robert E. Gerber
United States Bankruptcy Judge

Exhibit H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	Case No.: 09-50026 (REG)
	:	(Jointly Administered)
Debtors.	:	

CASE MANAGEMENT ORDER RE NO-STRIKE, NO-STAY, OBJECTION, AND GUC TRUST ASSET PLEADINGS

1. The Court has received and reviewed New GM's letter (ECF #13381) and the accompanying order of the district court denying withdrawal of the reference on issues related to No-Strike, No-Stay, Objection, and GUC Trust Asset Pleadings. To facilitate consideration of the matters yet to be determined in this Court with respect to these and related matters,[1] the parties are to advise this Court by letter (also docketed, of course, on ECF), submitted no later than the close of business one week from today, of:

(a) each of the individual complaints that are the subjects of No-Strike Pleadings, Objection Pleadings, or GUC Trust Asset Pleadings (or, to the extent applicable, No-Stay Pleadings and No Dismissal Pleadings), that need to be decided in this Court;

(b) the extent to which briefs are expected to be filed that have not yet been filed with respect to the disputes listed in Paragraph 1(a)—broken down by dispute and complaint (including, without limitation, New GM's disputes with each of the Ignition Switch Economic Plaintiffs; the Non-Ignition Switch Economic Plaintiffs; the *Elliott*, *Sesay*, and *Bledsoe*

[1] Thus this Order does not cover New GM's Pillars Rule 9023 motion. It does, however, cover anything that needs to be done with respect to the *Elliott*, *Sesay*, and *Bledsoe* actions.

Plaintiffs; and the states of California and Arizona, and the GUC Trust's disputes with plaintiffs on the GUC Trust Asset pleading), and any deadlines that have been agreed upon or otherwise set for their submission;

(c) how long it would take for New GM to submit to the Court marked pleadings, with respect to each complaint as to which it has concerns (*e.g.*, the Ignition Switch Plaintiffs' Second Amended Consolidated Complaint)—which marked pleadings would show the particular individual paragraphs (or parts of paragraphs) to which New GM objects, and shorthand descriptions of the grounds for objection;

(d) whether New GM, any plaintiff, or any other party in interest would wish to provide commentary with respect to any marked pleadings (either with the marked pleading's submission or thereafter) apart from any briefs otherwise submitted or to be submitted;

(e) any alternative suggestions (beyond or instead of the combination of briefs and marked pleadings that the Court currently envisions) as to the best means for this Court to provide the MDL Court and other courts with rulings of the level of specificity they might need vis-à-vis issues yet to be decided by this Court;

(f) the extent to which oral argument on any of the matters subject to Paragraph 1(a) is desired;

(g) any other matters that need to be addressed by this Court; and

(h) any upcoming dates as to which counsel, by reason of religious observance or other obligations, would be unavailable for oral argument at a hearing on the preceding matters.

2. The Court is in particular need of information with respect to the Non-Ignition Switch Plaintiffs' claims (whether for injury or death or economic loss), and pending and future matters affecting them, but so long as such claims are satisfactorily covered in the letter(s) to come, they can be addressed in connection with other claims to the extent appropriate.

3. Though the Court would prefer a joint submission, it will accept separate submissions if parties cannot timely agree.

SO ORDERED.

Dated: New York, New York
August **19,** 2015

s/Robert E. Gerber
United States Bankruptcy Judge

Exhibit I

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---x	
In re	: Chapter 11
	:
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	: Case No.: 09-50026 (REG)
	:
Debtors.	: (Jointly Administered)
---x	

SCHEDULING ORDER REGARDING CASE MANAGEMENT ORDER
RE: NO-STRIKE, NO STAY, OBJECTION, AND GUC TRUST ASSET PLEADING

Upon the Court's Case Management Order, dated August 19, 2015 ("**August 19 Order**"), regarding issues related to No-Strike, No Stay, Objection and GUC Trust Asset Pleadings (each as defined in the Court's Judgment, dated June 1, 2015 ("**Judgment**")); and upon responses thereto being filed on August 26, 2015 by certain parties in connection with the issues raised in the August 19 Order; and upon the record of the Case Management Conference held before the Court on August 31, 2015 ("**August 31 Conference**"); and due and proper notice of the August 31 Conference having been provided; and the Court having issued directives from the bench at the August 31 Conference in connection with the issues raised thereat which are memorialized in this Order. Accordingly, it is hereby

ORDERED that the following procedures shall apply:

1. The briefing schedule with respect to the issue ("**Punitive Damages Issue**") in complaints filed against General Motors LLC ("**New GM**") that request punitive/special/exemplary damages against New GM based in any way on the conduct of Motors Liquidation Co. (f/k/a General Motors Corporation) ("**Old GM**"), shall be as follows: (i) simultaneous opening briefs shall be filed by Sunday, September 13, 2015 at 12:00 noon (Eastern Time), and shall be no longer than 25 pages; and (ii) simultaneous reply briefs shall be filed by no later than Tuesday, September 22, 2015 at 12:00 noon (Eastern Time), and shall be no longer than 10 pages.[1] Designated Counsel for the Bellwether Cases (as herein

[1] Hard copies of the briefs referred to in this paragraph may be delivered to Chambers the next business day.

defined) and Designated Counsel for the Economic Loss Claims asserted in MDL 2543 shall try to coordinate the responses from various plaintiffs in order to minimize the number of briefs filed on this issue.

2. The briefing schedule with respect to whether causes of action in complaints filed against New GM relating to Old GM vehicles/parts based on the knowledge Old GM employees gained while working for Old GM and/or as reflected in Old GM's books and records transferred to New GM can be imputed to New GM ("**Imputation Issue**"), shall be as follows: (i) simultaneous opening briefs shall be filed by Friday, September 18 2015, and shall be no longer than 20 pages; and (ii) simultaneous reply briefs shall be filed by no later than Wednesday September 30, 2015, and shall be no longer than 10 pages.

3. With respect to the complaints in the six bellwether cases (collectively, the "**Bellwether Cases**") identified in MDL 2543 pending in the United States District Court for the Southern District Of New York:[2]

   a. On or before September 21, 2015, New GM shall file with the Court and serve on counsel of record in such cases (i) marked complaints ("**Bellwether Marked Complaints**") with respect to the Bellwether Cases, showing which portions thereof New GM contends violate the Judgment, this Court's *Decision on Motion to Enforce Sale Order*, dated April 15, 2015 ("**Decision**"),[3] and/or the Order of this Court dated July 5, 2009 ("**Sale Order and Injunction**") and (ii) a letter, not to exceed three (3) single-spaced pages for all the Bellwether Cases, setting forth New GM's position with respect to the Bellwether Marked Complaints ("**New GM Bellwether Letter**"); and

   b. On or before September 28, 2015, the plaintiffs in the Bellwether Cases shall file with the Court and serve on counsel of record in such cases their commentary next to the comments made by New GM with regard to the Bellwether Marked Complaints, together with a letter, not to exceed three (3) single-spaced pages for all the Bellwether Cases, responding to the Bellwether Marked Complaints and the New GM Bellwether Letter.

---

[2] The plaintiffs in the Bellwether Cases are (i) Scheuer, (ii) Barthelemy and Spain, (iii) Reid, (iv) Cockram, (v) Norville, and (vi) Yingling. Each of the plaintiffs in the Bellwether Cases are seeking, among other damages, compensation for property damage to their respective vehicles that occurred or was sustained in the applicable incident ("**Property Damage**"). The plaintiffs acknowledge that they are not seeking to recover damages for devaluation of their respective vehicles that is independent of Property Damage ("**Vehicle Devaluation Damages**"). To the extent that any of the requests for damages in the complaints in the Bellwether Cases can be construed to include Vehicle Devaluation Damages, the complaints are deemed to be amended to exclude Vehicle Devaluation Damages. In particular (i) paragraphs 367-369 of the complaint in *Norville v. General Motors, LLC* (Case No. 14-cv-08176) (S.D.N.Y.) and (ii) paragraphs 415-417 of the complaint in *Cockram v. General Motors, LLC* (Case No. 14-cv-08176) (S.D.N.Y.), shall be deemed amended to exclude any request for Vehicle Devaluation Damages. New GM will submit the Bellwether Marked Complaints with the assumption that such amendments were made.

[3] *In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015).

4. With respect to the Second Amended Consolidated Complaint filed in MDL 2543 ("SACC"):

    a. On or before September 23, 2015, New GM shall file with the Court and serve as appropriate (i) a marked-up version of the Second Amended Consolidated Complaint ("**Marked SACC**"), showing which portions thereof New GM contends violate the Judgment, the Decision and/or the Sale Order and Injunction, and (ii) a letter, not to exceed five (5) single-spaced pages, setting forth New GM's position with respect to the Marked SACC ("**New GM Marked SACC Letter**"); and

    b. On or before September 30, 2015, the Designated Counsel for the plaintiffs named in the Second Amended Consolidated Complaint shall file with the Court and serve on counsel of record in such cases their commentary next to the comments made by New GM with regard to the Marked SACC, together with a letter, not to exceed five (5) single-spaced pages, responding to the Marked SACC and New GM Marked SACC Letter.

    c. Due to the length of the SACC, New GM and Designated Counsel are directed to consult with each other to see if there is an agreed-upon procedure such that the Marked SACC, and the response thereto, can be stream-lined, so that the relevant, representative issues are efficiently presented to this Court for resolution.

5. With respect to the complaints filed in *People of California v. General Motors LLC*, *et al.*, No. 30-2014-00731038-CUBT-CXC (Orange County, Cal.) and *State of Arizona v. General Motors LLC*, No. CV2014-014090 (Maricopa County, Ariz.) (collectively, the "**State Complaints**"):

    a. On or before September 23, 2015, New GM shall file with the Court and serve on counsel of record in such cases (i) a marked-up version of the State Complaints ("**Marked State Complaints**"), marked to show which portions thereof New GM contends violate the Judgment, the Decision and/or the Sale Order and Injunction, and (ii) a letter, not to exceed five (5) single-spaced pages for the States' Complaints, setting forth New GM's position with respect to the Marked State Complaints ("**New GM Marked State Complaint Letter**"); and

    b. On or before September 30, 2015, the plaintiffs named in the State Complaints shall file with the Court and serve on counsel of record in such cases their commentary next to the comments made by New GM with regard to the Marked State Complaints, together with a letter, not to exceed five (5) single-spaced pages for the States' Complaints, responding

to the Marked State Complaints and New GM Marked State Complaints Letter.

6. The Court has scheduled oral argument for the matters covered by paragraphs 1-5 for October 14, 2015 at 9:45 a.m.

7. The parties agree that no further pleadings relating to the GUC Trust Asset Pleading need be submitted and no side has requested oral argument with respect to such Pleading.

8. Counsel for the plaintiffs in *Bavlsik v. General Motors LLC* ("***Bavlsik* Lawsuit**") pending in the United States District Court for the Eastern District of Missouri has notified New GM that they will withdraw their claim for punitive damages in order to promptly proceed to trial in the *Bavlsik* Lawsuit. Accordingly, there is no need for this Court to deal with the *Bavlsik* Lawsuit at this time.

ORDERED that within two (2) business days of the entry of this Scheduling Order, New GM shall serve, by either e-mail, facsimile, overnight mail or, if none of the foregoing are available, regular mail, a copy of this Scheduling Order on plaintiffs in any lawsuit where New GM has previously sent a demand letter as authorized by the Judgment, with a cover note that states as follows:

> General Motors LLC ("**New GM**") previously served on you a demand letter ("**Demand Letter**") in connection with a lawsuit commenced by you against New GM which set forth certain deadlines for filings pleadings with the Bankruptcy Court (as defined in the Demand Letter). The attachment is a Scheduling Order entered by the Bankruptcy Court on September 3, 2015 ("**Scheduling Order**"). Please review the Scheduling Order as it modifies the time periods set forth in the Demand Letter for filing certain pleadings with the Bankruptcy Court, including without limitation, the 17 business days to respond to the Demand Letter.
>
> If you have any objection to the procedures set forth in the Scheduling Order, you must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this notice ("**Objection**"). Otherwise, you will be bound by the terms of the Scheduling Order and the determinations made pursuant thereto. If you believe there are issues that should be presented to the Court relating to your lawsuit that will not otherwise be briefed and argued in accordance with the Scheduling Order, you must set forth that position, with specificity in your Objection. The Court will decide whether a hearing is required with respect to any Objection timely filed and, if so, will, promptly notify the parties involved.

and it is further

ORDERED that in the event New GM believe there are issues to be decided by the Court in actions that received a demand letter that are not covered in paragraphs 1-5 above, New GM shall file with the Court and serve on counsel of record in such representative case(s) on or before September 23, 2015 (i) a marked-up version of their complaints ("**Other Plaintiffs' Complaints**"), showing which portions thereof New GM contends violate the Judgment, the Decision and/or the Sale Order and Injunction, and (ii) a letter, not to exceed three (3) single-spaced pages for the Other Plaintiffs' Complaints, setting forth New GM's position with respect to the Marked Other Plaintiffs' Complaints ("**New GM Marked Other Plaintiffs' Complaints Letter**"); and it is further

ORDERED that on or before September 30, 2015, the plaintiffs named in the Other Plaintiffs' Complaints shall file with the Court and serve on counsel of record in such cases their commentary next to the comments made by New GM with regard to the Other Plaintiffs' Complaints, together with a letter, not to exceed three (3) single-spaced pages for the Other Plaintiffs' Complaints, responding to the Marked Other Plaintiffs' Complaints and the New GM Marked Other Plaintiffs' Complaints Letter; and it is further

ORDERED that nothing in this Order is intended to nor shall preclude any other plaintiff's counsel (or *pro se* plaintiff), affected by the issues being resolved by this Court, from taking a position in connection with any such matters; *provided, however*, that such affected other plaintiffs' counsel who wishes to file a separate pleading with respect such matter(s) shall timely file a letter with the Court seeking permission to do so. Such letter shall specify (a) which issue is to be covered, (b) the length of the pleading sought to be filed, and (c) why such issue is not otherwise covered by the pleading to be filed by Designated Counsel. Prior to such time, such counsel shall consult with the Designated Counsel for the Bellwether Cases and Designated

Counsel for the Plaintiffs in MDL 2543 so as to avoid duplicative arguments and in an effort to limit the number of responsive briefs on the same issue(s); and it is further

ORDERED that, as stated on the record of the August 31 Conference, for all plaintiffs that have received a demand letter from New GM where the time period to file a No Strike, No Stay, and No Dismissal Pleading as set forth in the Judgment ("**Judgment Pleading**") had not expired as of the August 31 Conference, the briefing schedule set forth herein shall supersede the requirement to file such Judgment Pleadings; and it is further

ORDERED that this Court shall retain exclusive jurisdiction to interpret and enforce this Order.

Dated: September 3, 2015
New York, New York

s/ Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

Exhibit J

KING & SPALDING

King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Tel: (212) 556-2100
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Scott Davidson
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September 4, 2015

Via E-Mail And Overnight Delivery
James E. Butler, Jr.
Robert D. Cheeley
Tedra C. Hobson
Robert H. Snyder
BUTLER WOOTEN, ET AL.
2719 Buford Highway
Atlanta, GA 30324

William G. Hammill
KENNETH S. NUGENT, PC
4227 Pleasant Hill Road
Building 11, Suite 300
Duluth, GA 30096

Re: ***Fox vs. General Motors LLC, et al.***
Case No.: 14A 3468-4 (Cobb County, GA)

Dear Counsel:

Reference is made to the *Complaint for Damages* ("**Pleading**") filed in the above-referenced lawsuit ("**Lawsuit**"), which seeks to hold General Motors LLC ("**New GM**") liable for various claims, as well as seeks punitive damages. From a review of the Pleading, it appears that Plaintiff is making allegations and seeking punitive damages from New GM that arise from the conduct of Motors Liquidation Company (f/k/a General Motors Corporation) ("**Old GM**") (and not New GM). The attempt to seek such punitive damages from New GM is a violation of the Sale Order and Injunction (as herein defined) entered by the Bankruptcy Court (as herein defined). *See Decision on Motion to Enforce Sale Order*, *In re Motors Liquidation Company*, 529 B.R. 510 (Bankr. S.D.N.Y 2015) ("**Decision**"), as well as the Judgment entered by the Bankruptcy Court on June 1, 2015 ("**Judgment**").[1] As such, the request for punitive damages cannot be maintained against New GM.

The Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended) ("**Sale Agreement**"), which was approved by an Order, dated July 5, 2009 ("**Sale**

[1] A copy of the Judgment is annexed hereto as **Exhibit "A."** The Judgment memorializes the rulings in the Decision, a copy of which is annexed hereto as **Exhibit "B."**

Order and Injunction"), of the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), is clear in this regard. Specifically, various provisions of the Sale Agreement and the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities, as defined in the Sale Agreement) predicated on Old GM conduct, relating to the operation of Old GM's business, or the production of vehicles and parts before July 10, 2009. *See, e.g.*, Sale Order and Injunction ¶¶ AA, 8, 46. The Sale Order and Injunction enjoins parties from bringing actions against New GM for unassumed Old GM liabilities. *Id.*, ¶ 8.

To the extent the request for punitive damages contained in the Pleading is based on a successor liability theory, such liabilities were not assumed by New GM and, accordingly, New GM cannot be liable to the Plaintiff under that theory of recovery. Punitive damages which are assessed to deter future wrongful conduct of Old GM, unrelated to the specific accident, was never something that New GM assumed. The Bankruptcy Court has previously found that New GM only assumed the liabilities that were commercially necessary for its post-sale business activities. Punitive damages assessed to punish alleged pre-sale wrongful conduct of Old GM would never be something considered "commercially necessary." In fact, based on the subordinated priority of punitive damage claims in bankruptcy, even Old GM would not have been required to pay such damages. And, clearly, New GM did not assume an obligation that Old GM would never have been required to pay.

The Sale Order and Injunction also provides that the Bankruptcy Court retains "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [New GM] against any of the [liabilities that it did not expressly assume under the Sale Agreement]." Sale Order and Injunction, ¶ 71. If there is any ambiguity with respect to any of the foregoing -- which there should not be -- the exclusive forum to clarify that ambiguity is the Bankruptcy Court. The Bankruptcy Court has consistently exercised jurisdiction over issues such as those raised in the Lawsuit.[2]

The Bankruptcy Court recently issued the Judgment, which reiterated that "[e]xcept for Independent Claims and Assumed Liabilities (if any), all claims and/or causes of action that the Ignition Switch Plaintiffs may have against New GM concerning an Old GM vehicle or part seeking to impose liability or damages based in whole or in part on Old GM conduct (including, without limitation, on any successor liability theory of recovery) are barred and enjoined pursuant to the Sale Order . . . ." Judgment ¶ 9; *see also* Decision, 529 B.R. at 528 ("Claims premised in any way on Old GM conduct are properly proscribed under the Sale Agreement and the Sale Order, and by reason of the Court's other rulings, the prohibitions against the assertion of such claims stand."). The reasoning and rulings set forth in the Judgment and Decision are equally applicable to the Lawsuit. To the extent that the Pleading requests punitive damages based on Old GM conduct, such a request is proscribed. Accordingly, the Pleading should be amended so that it is consistent with the rulings in the Judgment, Decision and Sale Order and Injunction.

---

[2] *See, e.g.*, *Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-09803, 2013 WL 620281 (Bankr. S.D.N.Y. Feb. 19, 2013); *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–00509, 2012 WL 1339496 (Bankr. S.D.N.Y. Apr. 17, 2012), *aff'd,* 500 B.R. 333 (S.D.N.Y. 2013), *aff'd*, No. 13-4223-BK, 2014 WL 4653066 (2d Cir. Sept. 19, 2014). *See also Celotex Corp. v. Edward*, 514 U.S. 300 (1995).

While the Judgment provided procedures for amending pleadings that violate the Judgment, Decision and Sale Order and Injunction, or filing a pleading with the Bankruptcy Court if you have a good faith basis to maintain that your pleading should not be amended, the Bankruptcy Court, on September [3], 2015, entered a *Scheduling Order Regarding Case Management Order Re: No-Strike, No Stay, Objection, And GUC Trust Asset Pleading* ("**Scheduling Order**"), which contains procedures that supersede the procedures set forth in the Judgment. A copy of the Scheduling Order is attached hereto as **Exhibit "C."** Please consult the Scheduling Order for the procedures that apply to this matter.

If you have any objection to the procedures set forth in the Scheduling Order, you must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this demand letter ("**Objection**"). Otherwise, you will be bound by the terms of the Scheduling Order and the determinations made pursuant thereto. If you believe there are issues that should be presented to the Bankruptcy Court relating to your lawsuit that will not otherwise be briefed and argued in accordance with the Scheduling Order, you must set forth that position, with specificity, in your Objection. The Bankruptcy Court will decide whether a hearing is required with respect to any Objection timely filed and, if so, will, promptly notify the parties involved.

This letter and its attachments constitute service on you of the Judgment and Decision, as well as the Scheduling Order.

New GM reserves all of its rights regarding any continuing violations of the Bankruptcy Court's rulings.

If you have any questions, please call me.

Very truly yours,

/s/ Scott I. Davidson

Scott I. Davidson

SD/hs
Encl.

cc: Richard Willis, Esq.
Kevin Malloy, Esq.
Thomas M. Klein, Esq.
Carrie L. Christie, Esq.
Robert H. Burke, Esq.

Exhibit K

James E. Butler, Jr., P.C.*
Joel O. Wooten
Robert D. Cheeley
Brandon L. Peak
John C. Morrison III
Tedra C. Hobson
Robert H. Snyder**
David T. Rohwedder*
Morgan E. Duncan
Joseph M. Colwell
* admitted in GA & AL
** admitted in GA & FL

BWCP Butler Wooten Cheeley & Peak LLP

September 9, 2015

VIA EMAIL (sdavidson@kslaw.com and kasher@kslaw.com) and U.S. MAIL

Scott I. Davidson, Esq.
Jennifer A. Asher, Esq.
King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Re: *Veronica Alaine Fox v. General Motors LLC and Atlanta Auto Brokers, Inc.*, State Court of Cobb County, Georgia, Civil Action File No. 14A-3468-4

Dear Mr. Davidson and Ms. Asher:

In direct response to your email of September 8, 2015, which constitutes our first receipt of your "demand letter,"—yes, K&S demanding on behalf of GM that we act "within 3 days" is manifestly "inconvenient." We're not bankruptcy lawyers, and we will need to consult some bankruptcy law experts. We don't have time to complete that process this week or next week. In fact, I personally don't have time to study this matter much at all this week or next week.

It is unclear why GM has even sent its September 8th email in this case. GM claims that the Scheduling Order of a New York Bankruptcy Court, attached to its letter as Exhibit C, "appl[ies] to this matter." Davidson Letter at 3. That is incorrect.

The Scheduling Order itself identifies the cases to which it applies. *Fox v. GM* is not one of them. It is not one of the specifically enumerated cases set out in paragraphs one through eight. Nor is it a "lawsuit where New GM has previously sent a demand letter as authorized by the Judgment," as described on page 4. As GM knows, GM has never sent such a "demand letter" to Ms. Fox. Any representation that Plaintiff is governed by this scheduling order of the New York Bankruptcy Court is false.

In an attempt to work through this, however, let me ask you some questions that will aid our consideration of your "demand letter."

1. Who deputized you to perform "service" on us of the Judgment and Decision? Please explain your claim of authority.
2. Is there a ruling by the Bankruptcy Court specific to Veronica Fox? (I did not see her, or her case, mentioned in the exhibits to your letter.)
3. You are aware, are you not, that Ms. Fox has not filed an 'ignition switch' claim?

REPLY TO Atlanta:
2719 Buford Highway • Atlanta, GA 30324
404.321.1700 • 1.800.242.2962 • FAX 404.321.1713

Columbus Office:
P.O. Box 2766 • Columbus, GA 31902
105 13th Street • Columbus, GA 31901
706.322.1990 • 1.800.242.2962 • FAX 706.323.2962

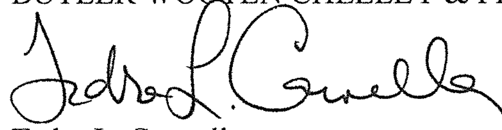
www.butlerwooten.com

4. You are aware, are you not, that Ms. Fox has a claim for failure to warn under Georgia law, and that this wreck came after the bankruptcy date in 2009, and that the failure to warn came after that date, and that punitive damages are available under Georgia law on a failure to warn claim?
5. Does GM claim that Ms. Fox is subject to the jurisdiction of the New York Bankruptcy Court? If so, explain how that came to be, please.
6. More specifically, does GM claim that the Bankruptcy Court has jurisdiction and power to rule regarding what may, or may not, be asserted in Ms. Fox's Complaint?
7. Does GM contend that a failure by us, on behalf of Ms. Fox, to acquiesce to your demands within "three days" will constitute a violation of an Order of the Bankruptcy Court? If so, please explain the basis for that contention.
8. Are you, and is GM, threatening to ask the Bankruptcy Court to hold us, or Ms. Fox, in "contempt" for not acquiescing within "three days" to your demands?
9. What is the specific authority for your statement that we, that is to say, those to whom you addressed your letter, or Ms. Fox, "must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this demand letter"?
10. That statement is a demand that Ms. Fox, and we, voluntarily submit ourselves to the jurisdiction of the Bankruptcy Court. What is your authority for contending that we must do so?
11. Does "New GM" contend that any claim for punitive damages based upon "New GM's" own failure to warn of known dangers is defeated by the successor liability exclusion in the Bankruptcy Court rulings? If so, isn't it clear that "New GM" is therefore contending that the entirety of the products liability inclusion is swallowed up within the successor liability exclusion? Does "New GM" contend that any products liability claim can be characterized by "New GM" as a successor liability claim?

We can find nothing in the bankruptcy court's judgment or orders that would apply to this non-ignition switch claim. Your apparent threat against Ms. Fox for a so-called "continu[ing] violation of the Bankruptcy Court's rulings" is unfounded.

Sincerely,

BUTLER WOOTEN CHEELEY & PEAK LLP



Tedra L. Cannella

TLC/bt
Via Email to:
cc James E. Butler, Jr.
Robert D. Cheeley, Esq.

Robert H. Snyder, Esq.
William Hammill, Esq.
James C. Morton, Esq.
Richard H. Willis, Esq.
Kevin J. Malloy, Esq.
Thomas M. Klein, Esq.
C. Megan Fischer, Esq.
Carrie L. Christie, Esq.
Robert H. Burke, Esq.

Exhibit L

Asher, Jennifer

From: Tedra Cannella <Tedra@butlerwooten.com>
Sent: Friday, September 11, 2015 5:33 PM
To: Davidson, Scott
Cc: Jim Butler; Bob Cheeley; William G. Hammill; Rob Snyder; Julie Houston; Cathy Huff; Betht Telgenhoff
Subject: RE: Fox v. General Motors LLC; Case No. 14A-3468-4 - Correspondence

The address you used in your 10:53 a.m. email (tendrac@butlerwooten.com) was wrong, which explains the error message. In the future, please copy our entire team on emails to ensure your email is received. The team is cc:'d here.

Our September 9th letter contained a list of questions in attempt to address GM's three-day "demand" letter. GM claims that "The issues raised in your correspondence are, or will shortly be, before the Bankruptcy Court." That is not correct. And of course, no issue will be before the bankruptcy Court before the expiration of your three-day "demand" letter. We cannot respond to your letter without answers to those questions. Therefore, we will not respond.

From: Davidson, Scott [mailto:SDavidson@KSLAW.com]
Sent: Friday, September 11, 2015 10:58 AM
To: Tedra Cannella; Betht Telgenhoff
Subject: FW: Fox v. General Motors LLC; Case No. 14A-3468-4 - Correspondence

Ms. Cannella:

I sent the below e-mail to you, but received an error message.

Thank you
Scott I. Davidson | King & Spalding LLP

Tel: 212.556.2164 | Fax: 212.556.2222 | E-mail: sdavidson@kslaw.com
1185 Avenue of the Americas | New York, New York 10036

The information contained in this e-mail is personal and confidential and is intended for the recipient only. In the event that you have received this message in error, please delete it immediately and inform the sender as soon as possible.

From: Davidson, Scott
Sent: Friday, September 11, 2015 10:53 AM
To: 'tendrac@butlerwooten.com'
Cc: Steinberg, Arthur; 'rgodfrey@kirkland.com'; Bloomer, Andrew B. (abloomer@kirkland.com); Asher, Jennifer (jasher@kslaw.com)
Subject: Fox v. General Motors LLC; Case No. 14A-3468-4 - Correspondence

We received your recent correspondence with respect to the above-referenced lawsuit. The issues raised in your correspondence are, or will shortly be, before the Bankruptcy Court. The Scheduling Order entered by the Bankruptcy Court on September 3, 2015, which was previously sent to you, sets forth various procedures with respecting to briefing certain issues, and the submission of marked pleadings and responses. A copy of the Scheduling Order is also attached hereto for your convenience. Subject to following the procedures set by the Court, you can participate in this process if you choose to. In short, you have the choice to brief issues that affect your client, or to wait for the Bankruptcy Court to decide issues based on briefs submitted by Designated Counsel and perhaps others.

Thank you
Scott I. Davidson | King & Spalding LLP

Tel: 212.556.2164 | Fax: 212.556.2222 | E-mail: sdavidson@kslaw.com
1185 Avenue of the Americas | New York, New York 10036

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Exhibit M

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Andrew B. Bloomer, P.C. (admitted *pro hac vice*)

Attorneys for General Motors LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No.: 09-50026 (REG)
f/k/a General Motors Corp., *et al.*	:	
	:	
Debtors.	:	(Jointly Administered)

CERTIFICATE OF SERVICE

This is to certify that on *September 13-15, 2015*, pursuant to the *Scheduling Order Regarding Case Management Order Re: No-Strike, No Stay, Objection, and GUC Trust Asset Pleading*, entered on September 3, 2015 [Dkt. No 13416] ("**Scheduling Order**"), I caused to be served a true and correct copy of the *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages from General Motors LLC Based on the Conduct of General Motors Corporation* (with Exhibit) [Dkt. No 13437]. Copies of the document listed in the annexed service lists was served upon each of the persons and entities

listed therein on *September 13-15, 2015*, by causing copies of same to be delivered *via* email and/or *via* overnight mail.

Dated: September 16, 2015
New York, New York

KING & SPALDING LLP

By: /s/ Scott I. Davidson
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Attorneys for General Motors LLC

Service List For September 13, 2015:

Documents Served *via* Email:

1 - *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages from General Motors LLC Based on the Conduct of General Motors Corporation* (with Exhibit) [Dkt. No 13437]

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* Denotes an email address where an “undeliverable” message was received. In these instances, the document was mailed via overnight mail (as indicated in the next section) to the respective mailing address for the email address.

<u>Service List For September 14, 2015</u>

<u>Documents Served *via* Overnight Delivery:</u>

1 - *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages from General Motors LLC Based on the Conduct of General Motors Corporation* (with Exhibit) [Dkt. No 13437]

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<u>Service List For September 15, 2015</u>[1]

<u>Documents Served *via* Overnight Delivery:</u>

1 - *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages from General Motors LLC Based on the Conduct of General Motors Corporation* (with Exhibit) [Dkt. No 13437]

Service Address	
John J. Driscoll Christopher J. Quinn THE DRISCOLL FIRM, P.C. 211 N. Broadway, 40th Floor St. Louis, MO 63102	

[1] Due to an administrative error, this mailing was sent via overnight mail on September 15, 2015.

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Attorneys for General Motors LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No.: 09-50026 (REG)
f/k/a General Motors Corp., *et al.*	:	
	:	
Debtors.	:	(Jointly Administered)

CERTIFICATE OF SERVICE

This is to certify that on *September 18, 2015*, pursuant to the *Scheduling Order Regarding Case Management Order Re: No-Strike, No Stay, Objection, and GUC Trust Asset Pleading*, entered on September 3, 2015 [Dkt. No 13416] ("**Scheduling Order**"), I caused to be served a true and correct copy of the *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records* [Dkt. No. 13451]. Copies of the document listed in the annexed service lists was served upon each of the persons and

entities listed therein, by causing copies of same to be delivered *via* email and/or *via* overnight mail and/or *via* first class mail.

Dated: September 21, 2015
New York, New York

KING & SPALDING LLP

By: /s/ Scott I. Davidson
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Attorneys for General Motors LLC

Service List For September 18, 2015:

Documents Served *via* Email:

1 - *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records* [Dkt. No. 13451]

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1 - *Opening Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records* [Dkt. No. 13451]

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---x		
In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No.: 09-50026 (REG)
f/k/a General Motors Corp., *et al.*	:	
	:	
Debtors.	:	(Jointly Administered)
---x		

CERTIFICATE OF SERVICE

This is to certify that on *September 21, 2015* and *September 22, 2015*, pursuant to the *Scheduling Order Regarding Case Management Order Re: No-Strike, No Stay, Objection, and GUC Trust Asset Pleading*, entered on September 3, 2015 [Dkt. No 13416] ("**Scheduling Order**"), I caused to be served a true and correct copy of the *New GM Bellwether Letter, with Marked Bellwether Complaints, Pursuant to Scheduling Order dated September 3, 2015 (with Exhibits)* [Dkt. No. 13456]. Copies of the document listed in the annexed service lists was served

09-50026-reg Doc 13434-15 Filed 09/22/15 Entered 09/22/15 18:22:54 Main Document
Pg 2 of 62

upon each of the persons and entities listed therein, by causing copies of same to be delivered *via* email and/or *via* overnight mail and/or *via* first-class mail.

Dated: September 22, 2015
New York, New York

KING & SPALDING LLP

By: /s/ Scott I. Davidson
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Service List For September 21, 2015:

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1 - *New GM Bellwether Letter, with Marked Bellwether Complaints, Pursuant to Scheduling Order dated September 3, 2015 (with Exhibits)* [Dkt. No. 13456]

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Service List For September 21, 2015

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1 - *New GM Bellwether Letter, with Marked Bellwether Complaints, Pursuant to Scheduling Order dated September 3, 2015 (with Exhibits)* [Dkt. No. 13456]

Service Address	
Angela Singleton P.O. Box 1263 Woodville, MI 39669	

<u>Service List For September 22, 2015</u>[1]

<u>Documents Served *via* Overnight Delivery:</u>

1 - *New GM Bellwether Letter, with Marked Bellwether Complaints, Pursuant to Scheduling Order dated September 3, 2015 (with Exhibits)* [Dkt. No. 13456]

Service Address	
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[1] As indicated above, the parties that were served via overnight mail on September 22, 2015 were previously served via e-mail transmission on September 21, 2015. However, in response to such e-mail transmission, an “undeliverable” message was received and, accordingly, the documents were then sent via overnight mail.

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Attorneys for General Motors LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No.: 09-50026 (REG)
f/k/a General Motors Corp., *et al.*	:	
	:	
Debtors.	:	(Jointly Administered)

CERTIFICATE OF SERVICE

This is to certify that on *September 22, 2015*, pursuant to the *Scheduling Order Regarding Case Management Order Re: No-Strike, No Stay, Objection, and GUC Trust Asset Pleading*, entered on September 3, 2015 [Dkt. No 13416] ("**Scheduling Order**"), I caused to be served a true and correct copy of the *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages From General Motors LLC Based On The Conduct Of General Motors Corporation* [Dkt. No. 13460]. Copies of the document listed in the annexed service lists was served upon each of the persons and entities listed therein, by

causing copies of same to be delivered *via* email and/or *via* overnight mail and/or *via* first-class mail.

Dated: September 23, 2015
New York, New York

KING & SPALDING LLP

By: /s/ Scott I. Davidson

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Attorneys for General Motors LLC

Service List For September 22, 2015:

Documents Served *via* Email:

1 - *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages From General Motors LLC Based On The Conduct Of General Motors Corporation* [Dkt. No. 13460]

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* Denotes an email address where an “undeliverable” message was received. In these instances, the document was mailed via overnight mail (as indicated in the next section) to the respective mailing address for the email address.

<u>Service List For September 22, 2015</u>

<u>Documents Served *via* Overnight Delivery:</u>

1 - *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages From General Motors LLC Based On The Conduct Of General Motors Corporation* [Dkt. No. 13460]

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<u>Service List For September 22, 2015</u>

<u>Documents Served *via* First-Class Mail Delivery:</u>

1 - *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs May Seek Punitive Damages From General Motors LLC Based On The Conduct Of General Motors Corporation* [Dkt. No. 13460]

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Attorneys for General Motors LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	Case No.: 09-50026 (REG)
	:	
Debtors.	:	(Jointly Administered)

CERTIFICATE OF SERVICE

This is to certify that on *September 23, 2015* pursuant to the *Scheduling Order Regarding Case Management Order Re: No-Strike, No Stay, Objection, and GUC Trust Asset Pleading*, entered on September 3, 2015 [Dkt. No 13416] ("**Scheduling Order**"), I caused to be served a true and correct copy of the *Letter Filed on Behalf of General Motors LLC Regarding Other Plaintiffs' Complaints* (with Exhibits) [Dkt. No. 13466]. Copies of the document listed in the annexed service lists was served upon each of the persons and entities listed therein, by causing copies of same to be delivered *via* email and/or *via* overnight mail and/or *via* first-class mail.

Dated: September 24, 2015
New York, New York

KING & SPALDING LLP

By: /s/ Scott I. Davidson

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Service List For September 23, 2015:

Documents Served *via* Email:

1 - *Letter Filed on Behalf of General Motors LLC Regarding Other Plaintiffs' Complaints* (with Exhibits) [Dkt. No. 13466]

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Service List For September 23, 2015

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1 - *Letter Filed on Behalf of General Motors LLC Regarding Other Plaintiffs' Complaints* (with Exhibits) [Dkt. No. 13466]

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<u>**Service List For September 23, 2015**</u>

<u>**Documents Served *via* USPS Express Mail Delivery:**</u>

1 - *Letter Filed on Behalf of General Motors LLC Regarding Other Plaintiffs' Complaints* (with Exhibits) [Dkt. No. 13466]

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Scott Davidson

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Richard C. Godfrey, P.C. (admitted *pro hac vice*)
Andrew B. Bloomer, P.C. (admitted *pro hac vice*)

Attorneys for General Motors LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No.: 09-50026 (REG)
f/k/a General Motors Corp., *et al.*	:	
	:	
Debtors.	:	(Jointly Administered)

CERTIFICATE OF SERVICE

This is to certify that on September 30, 2015, pursuant to the *Scheduling Order Regarding Case Management Order Re: No-Strike, No Stay, Objection, and GUC Trust Asset Pleading*, entered on September 3, 2015 [Dkt. No 13416] ("**Scheduling Order**"), I caused to be served a true and correct copy of the *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records* [Dkt. No. 13482], by electronic mail on all parties receiving notice via the Court's ECF System.

In addition, copies of the document listed in the annexed service lists was served upon each of the persons and entities listed therein, by causing copies of same to be delivered *via* email and/or *via* overnight mail and/or *via* first-class mail.

Dated: October 1, 2015
New York, New York

KING & SPALDING LLP

By: /s/ Scott I. Davidson
Arthur J. Steinberg
Scott Davidson
King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036
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Facsimile: (212) 556-2222

Attorneys for General Motors LLC

Service List For September 30, 2015:

Documents Served *via* Email:

(1) *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records* [Dkt. No. 13482]

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(1) *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records* [Dkt. No. 13482]

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(1) *Reply Brief by General Motors LLC with Respect to Whether Plaintiffs Can Automatically Impute to New GM Knowledge of the Events that Took Place at Old GM and/or as Reflected in Old GM'S Books and Records* [Dkt. No. 13482]

Service Address	
Angela Singleton P.O. Box 1263 Woodville, MI 39669	

Exhibit N

Asher, Jennifer

From: Steinberg, Arthur
Sent: Monday, September 28, 2015 10:48 AM
To: Jim Butler; Asher, Jennifer
Cc: Tedra Cannella; Bob Cheeley; Rob Snyder; bill@ballardandfeagle.com; Greg Feagle (greg@ballardandfeagle.com); Julie Houston; Cathy Huff; Feller, Leonid (leonid.feller@kirkland.com); Bloomer, Andrew B. (abloomer@kirkland.com); O'Reilly, Deirdre A. (doreilly@kirkland.com); Davidson, Scott
Subject: RE: Fox vs. General Motors LLC, et al., Case No.: 14A 3468-4 (Cobb County, GA)); In re Motors Liquidation Company; Case No: 09-50026 -- Service of Other Plaintiffs' Complaints Letter, with Exhibits

I am responding to your questions. If the matter is still unclear, you can call me. 212 556 2158

The Bankruptcy Court entered a 6 page Scheduling Order dated September 3, 2015 which was sent to you by overnight mail and also emailed to you.

On page 4 of the Scheduling Order, the Bankruptcy Court directed New GM to send a copy of the Scheduling Order as well as a specific cover note to plaintiffs or their counsel who received demand letters (like yourself). You should review the Scheduling Order in general, and particularly the paragraph on page 4, and paragraphs on pages 5 and 6.

The procedures outlined in the Scheduling Order modified the procedures set forth in the Bankruptcy Court's June 1, 2015 Judgment which were set forth in demand letters.

Under the Scheduling Order, the Bankruptcy Court is deciding issues related to Punitive Damages, the Imputation Issue, Marked Pleadings in the Bellwether Complaints, States Complaints, Other Complaints, and the MDL Complaints. Everyone who got demand letters and the Scheduling Order will be bound by those determinations. There are Designated Counsel who have responded on behalf of plaintiffs. You are getting these pleadings so as to be fully informed as to what is going on. You are not compelled to respond to anything. Your clients and New GM will be bound by the Court's determination of issues decided pursuant to the Scheduling Order, which have relevance to the Fox litigation referenced above.

-----Original Message-----
From: Jim Butler [mailto:jim@butlerwooten.com]
Sent: Saturday, September 26, 2015 8:44 AM
To: Asher, Jennifer
Cc: Tedra Cannella; Bob Cheeley; Rob Snyder; bill@ballardandfeagle.com; Greg Feagle (greg@ballardandfeagle.com); Julie Houston; Cathy Huff; Steinberg, Arthur; Feller, Leonid (leonid.feller@kirkland.com); Bloomer, Andrew B. (abloomer@kirkland.com); O'Reilly, Deirdre A. (doreilly@kirkland.com); Davidson, Scott
Subject: Re: Fox vs. General Motors LLC, et al., Case No.: 14A 3468-4 (Cobb County, GA)); In re Motors Liquidation Company; Case No: 09-50026 -- Service of Other Plaintiffs' Complaints Letter, with Exhibits

To GM and GM lawyers:

Let us try again.

Is there something GM contends we must do as a result of receiving these emails? If so, what?

is there something GM contends we should - or could - do as a result of receiving these emails? If so, what?

Is GM trying to set up or create some argument that Ms. Fox has "waived" something if she or we do not do some thing as a result of receiving these emails? If so, what is the thing GM will or may argue has been "waived," and what is the basis for that argument?

Is GM sending us these emails because it contends it is compelled to do so due to some court's order? If so send that order, with the relevant provision highlighted.

Our apologies but we just do not have time just now to guess at the answers to the above questions, and since it is GM that is sending these emails, GM should be required to answer the questions and to thereby explain why it is sending us these emails.

Jim Butler

The information contained in this electronic mail message is attorney privileged and confidential information intended only for the use of the individual or entity named. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (800) 233-4086 or by reply email and delete this message. Do not copy or distribute it to anyone other than the intended recipient.

> On Sep 25, 2015, at 12:56 PM, "Jim Butler" <jim@butlerwooten.com> wrote:
>
> Ms. Asher, i've been really busy with cases. Please explain why you want me or any of us to read this letter. Merely noting that we're involved in Fox v. GM is not an explanation.
>
> We're not involved in the case in which the letter was "filed."
>
> thank you.
>
> if you are unwilling to explain fully why you send these emails to us, then kindly cease and desist from sending them.
>
> Jim Butler
>
>
>
> The information contained in this electronic mail message is attorney privileged and confidential information intended only for the use of the individual or entity named. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (800) 233-4086 or by reply email and delete this message. Do not copy or distribute it to anyone other than the intended recipient.
>
>
>> On Sep 23, 2015, at 3:09 PM, "Asher, Jennifer" <JAsher@kslaw.com> wrote:
>>
>> Counsel:
>>
>> Please see attached service copy of the Letter Filed on Behalf of General Motors LLC Regarding Other Plaintiffs' Complaints (with Exhibits) [Dkt. No. 13466], filed today, September 23, 2015, in the case captioned In re Motors Liquidation Company, Case No: 09-50026 (REG).

>>
>> You are receiving this service email in connection to your involvement as plaintiff’s counsel in Fox vs. General Motors LLC, et al., Case No.: 14A 3468-4 (Cobb County, GA)).
>>
>> Thank you,
>> Jennifer Asher
>>
>> Jennifer A. Asher
>> King & Spalding LLP
>> 1185 Avenue of the Americas
>> New York, NY 10036
>> Phone: (212) 556-2196
>> Email: jasher@kslaw.com<mailto:jasher@kslaw.com>
>>
>>
>> ___________________________________
>>
>> King & Spalding Confidentiality Notice:
>>
>> This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.
>> <15 09 23 -13466 GM Ltr COURT Re Other Plaintiffs Complaints (w-EXs).pdf>

Exhibit O

KING & SPALDING

King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Tel: (212) 556-2100
Fax: (212) 556-2222
www.kslaw.com

Scott Davidson
Direct Dial: 212-556-2164
sdavidson@kslaw.com

May 16, 2016

Via E-Mail Transmission
James E. Butler, Jr.
BUTLER WOOTEN & CHEELEY & PEAK LLP
2719 Buford Highway
Atlanta, Georgia 30324

Re: ***Fox v. General Motors LLC, et al.***
Case No.: 14A 3468-4

Dear Counsel:

By this letter, General Motors LLC ("**New GM**") demands that certain allegations, claims and damage requests made in the Complaint filed in the above referenced lawsuit be withdrawn due to the requirements of federal bankruptcy law, for the reasons explained below.[1]

Plaintiff is violating the Sale Order and Injunction[2] entered by the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), as well as certain recent decisions and judgments entered by the Bankruptcy Court.[3] The following allegations, claims and damage requests are legally barred:

- Allegations that merely refer to "GM" and do not distinguish between Old GM and New GM (*see* Complaint, pages 1-2, and ¶¶ 2, 3, 16-24, 28, 29, 35, 38, 39, 40, 43, 46, 47, 62, 63);

---

[1] You were previously sent a letter in connection with this Lawsuit in 2015 ("**2015 Letter**"), highlighting issues with the Complaint and explaining that the Complaint needed to be amended. At that time, the Bankruptcy Court had not yet issued the November Decision and December Judgment (each as defined below). The rulings by the Bankruptcy Court in the November Decision and December Judgment require the amendment of the Complaint, as explained herein.

[2] A copy of the Sale Order and Injunction (with the Sale Agreement attached thereto) is annexed hereto as **Exhibit "A."**

[3] *See In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y 2015) ("**April Decision**"); Judgment entered by the Bankruptcy Court on June 1, 2015 ("**June Judgment**"); *In re Motors Liquidation Co.*, 541 B.R. 104 (Bankr. S.D.N.Y. 2015) ("**November Decision**"); and Judgment entered by the Bankruptcy Court on December 4, 2015 ("**December Judgment**"). Copies of the June Judgment and December Judgment are annexed hereto as **Exhibit "B"** and **Exhibit "C,"** respectively. Copies of the two published decisions of the Bankruptcy Court can be provided upon request.

- Allegations that New GM designed, manufactured, tested, marketed and/or distributed the subject vehicle, a 2004 SRX ("**Subject Vehicle**"), or performed other conduct relating to the Subject Vehicle before the closing of the Sale from Old GM to New GM (*see* Complaint, pages 1-2, and ¶¶ 8, 11, 15, 16-23, 28, 32-34, 38, 39, 43, 62);

- Claims that concern an alleged duty to warn, to the extent that such claims are based on the conduct of New GM (*see* Complaint, ¶¶ 22, 28, 38-41, 43, 44, 47); and

- All requests for punitive damages as against New GM.

Applicable Bankruptcy Court Rulings

The Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended) ("**Sale Agreement**"), which was approved by an Order, dated July 5, 2009 ("**Sale Order and Injunction**") of the Bankruptcy Court, provides that New GM assumed only three categories of liabilities for vehicles sold by Old GM: (a) post-sale accidents or incidents involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"—a specific written warranty, of limited duration, that only covers repairs and replacement of parts and not monetary damages; and (c) Lemon Law claims (as defined in the Sale Agreement) essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles sold by Old GM were "Retained Liabilities" of Old GM. *See* Sale Agreement § 2.3(b). To the extent the claims asserted in the Complaint are based on a successor liability theory or otherwise constitute Retained Liabilities, they were not assumed by New GM and, accordingly, New GM cannot be liable to Plaintiff for such claims. *See* Sale Order and Injunction, ¶¶ 7, 46; Sale Agreement, §§ 2.3(a), 2.3(b).

Paragraph 14 of the December Judgment provides as follows:

> Plaintiffs of two types—1) plaintiffs whose claims arise in connection with vehicles without the Ignition Switch Defect, and 2) Pre-Closing Accident Plaintiffs—are not entitled to assert Independent Claims against New GM with respect to vehicles manufactured and first sold by Old GM (an "**Old GM Vehicle**"). To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015[.]

The Plaintiff in the Lawsuit does not have a claim based on the Ignition Switch Defect and therefore is prohibited from asserting an Independent Claim[4] against New GM.

The December Judgment also described the types of allegations that cannot be made in complaints asserting claims against New GM based on Old GM vehicles. Specifically, Plaintiff is

[4] The term "Independent Claim" was defined by the Bankruptcy Court in paragraph 4 of the June Judgment as "claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct."

prohibited from making allegations: (i) that New GM is the successor of Old GM (no matter how phrased) (*see* December Judgment, ¶ 16); (ii) that do not distinguish between Old GM and New GM (*see id.* ¶ 17); or (iii) that allege or suggest that New GM manufactured or designed an Old GM vehicle, or performed other conduct relating to an Old GM vehicle before the entry of the Sale Order and Injunction (*i.e.*, July 10, 2009) (*see id.* ¶ 18).

Moreover, the December Judgment determined that New GM did not assume punitive damages relating to Product Liabilities under the Sale Agreement. Parties such as Plaintiff can only seek compensatory damages. *See* December Judgment, ¶ 6 ("New GM did not contractually assume liability for punitive damages from Old GM.").

The Barred Allegations, Claims and Requests for Damages in the Complaint

The Bankruptcy Court's rulings apply to Plaintiff's Lawsuit. As set forth on pages 1 and 2 above, the Complaint contains allegations that are prohibited by the December Judgment, requiring that the Complaint be amended.

Moreover, the Sale Order and Injunction enjoins parties from bringing actions against New GM for Retained Liabilities of Old GM. *Id.*, ¶ 8. Under the December Judgment, Non-Ignition Switch Plaintiffs (like Plaintiff) are barred from asserting any claims (other than Assumed Liabilities) against New GM. *See* December Judgment, ¶ 14. The December Judgment specifically provides that New GM did not assume various claims and/or causes of action when it agreed to assume Product Liabilities. Proscribed causes of action contained in the Amended Complaint are set forth on page 2 above.

In addition, because New GM did not assume punitive damages in connection with its assumption of Product Liabilities, and Plaintiff is a Non-Ignition Switch Plaintiff, the request for punitive damages against New GM violates the Sale Order and Injunction, and the Bankruptcy Court's rulings. All requests for punitive damages as against New GM must be stricken from the Complaint.

Conclusion

The December Judgment stays the Lawsuit until all violations of the Sale Order and Injunction, and the Bankruptcy Court's other rulings, are sufficiently addressed. *See, e.g.*, December Judgment, ¶¶ 16, 17, 18. Please let us know by May 23, 2016 whether you will take the requested action and comply with the Bankruptcy Court's rulings.

New GM reserves all of its rights regarding any continuing violations of the Bankruptcy Court's rulings, including, but not limited to seeking all available relief if it is determined that there is a willful violation of the Sale Order and Injunction and the Bankruptcy Court's other rulings, particularly where Plaintiff previously received the 2015 Letter, which put Plaintiff on notice of applicable Bankruptcy Court rulings and the need to amend the Complaint. *See FirstBank Puerto Rico v. Barclays Capital Inc. (In re Lehman Brothers Holdings Inc.)*; Summary Order, Case No. 15-149-br. (2d Cir. March 29, 2016).

If you have any questions, please call me.

Very truly yours,

/s/ Scott I. Davidson

Scott I. Davidson

SD/hs
Encl.

cc: Thomas Klein, Esq. (via Email)
Bill Casey, Esq. (via Email)

James E. Butler, Jr., P.C.*
Joel O. Wooten
Robert D. Cheeley
Brandon L. Peak
John C. Morrison III
Tedra L. Cannella
Robert H. Snyder**
David T. Rohwedder*
Morgan E. Duncan
Joseph M. Colwell
Christopher B. McDaniel
Rory A. Weeks
Michael L. Thurmond
Of Counsel

* admitted in GA & AL
** admitted in GA & FL

BWCP Butler Wooten Cheeley & Peak LLP

May 19, 2016

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED and EMAIL

General Motors, LLC
c/o Thomas M. Klein
Bowman & Brooke, LLP
2901 N. Central Avenue, Suite 1600
Phoenix, AZ 85012
Certified Mail No. 71969008911104221119

King & Spalding, LLP
c/o Scott Davidson
1185 Avenue of the Americas
New York, NY 10016-4003
Certified Mail No. 71969008911104221102

Scott Davidson
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Jennifer Asher
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Thomas M. Klein
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Certified Mail No. 71969008911104221072

Bowman & Brooke, LLP
c/o Thomas M. Klein
Bowman & Brooke, LLP
2901 N. Central Avenue, Suite 1600
Phoenix, AZ 85012
Certified Mail No. 71969008911104221065

Re: *Veronica Alaine Fox v. General Motors LLC and Atlanta Auto Brokers, Inc.*, State Court of Cobb County, Civil Action File No. 14A-3468-4, May 16, 2016 letter from Scott Davidson of King & Spalding, LLP to Plaintiff's Counsel

To All Addressees Identified Above:

This letter is directed to "New GM" ("GM LLC"), to the law firm of King & Spalding, LLP, to Mr. Davidson who signed the letter to Plaintiff's counsel dated May 16, 2016, to Ms. Asher who forwarded said letter to us via email, to GM LLC's counsel in Fox v. GM, Thomas Klein and the law firm of Bowman & Brooke, LLP, and to all others who participated in the decision to send and compose said letter. This letter is directed to said persons pursuant to O.C.G.A § 51-7-80 et seq. to give each an opportunity to withdraw said letter consistent with the

terms of that statute. Failure to do so will result in Plaintiff seeking all damages available to her pursuant to said statute.[1]

In the May 16, 2016 letter, those responsible for its content make strong accusations: "Plaintiff is violating" a court order; certain claims made by Plaintiff Fox are "legally barred"; "the Complaint contains allegations that are prohibited"; Ms. Fox's lawsuit is "stayed" based on your decision there are "violations." Kindly send to us the Court Order so holding with regard to Ms. Fox's lawsuit. If there is no such Order holding those things regarding Ms. Fox and her lawsuit, kindly send documentation that whoever is responsible for stating those conclusions has been appointed a judge of some court with authority to make such judgments.

Counsel for Plaintiff Fox have no intention of violating any Court Order or any prospective Court order, nor have we done so. To eliminate any possible doubt, even in the fervid imaginations of those responsible for the May 16, 2016 letter, we are currently drafting a Recast & Amended Complaint to conform with the legal principles announced by the Bankruptcy Court in its December 4, 2015 Judgment regarding claims in the Ignition Switch cases. So that there will be no doubt about what those responsible for the May 16, 2016 letter contend, kindly state, with respect to each paragraph of the original Complaint referenced in the four bullet points listed under the second paragraph of said letter, and any other paragraph of the original Complaint referenced in said letter, precisely what is the basis for any accusation that each said paragraph "violates" a "Court Order."

To repeat: do so separately for each paragraph of the original Complaint. As stated, we are drafting a Recast & Amended Complaint. To know which words to use, or not use, we have to know what it is specifically that you contend "violates" a Court Order—and how, which is to say, why.

Kindly also provide to us the purported authority for your position that the assertion of failure to warn and punitive damage claims against "New GM" in the Fox case is contrary to the Bankruptcy Court's Order of December 4, 2015 related to claims in the Ignition Switch cases and so, you presume, contrary to a Bankruptcy Court Order if the Bankruptcy Court were to enter an order applicable to Fox v. GM with the same provisions as the December 4, 2015 Order. We note that the judgment attached to your letter makes no reference to the Fox case (which is not an ignition switch case) and appears to contradict the positions espoused in your letter. *See* Dec. 4, 2015 Judgment at ¶¶ 7, 20.

Just to be sure it is clear: we *will be* filing a Recast & Amended Complaint; we plan to do so just as soon as you respond to our 9/9/15 letter and to this letter. Our goal is to avoid any needless dispute. The Recast & Amended Complaint will make it perfectly clear that the

---

[1] The statute requires that this letter be served by certified mail. It is therefore being served on K&S and on B&B and on GM LLC care of K&S and B&B. It is also being served, as a courtesy, via email.

punitive damages claims are for post-bankruptcy conduct by GM LLC. Plaintiff Fox *does not* seek punitive damages against GM LLC based on any pre-bankruptcy conduct of "Old GM." The Recast & Amended Complaint will also make it perfectly clear that the failure to warn case against GM LLC is for the post-bankruptcy conduct of GM LLC and the pre-bankruptcy conduct of "Old GM." *If* you contend that GM LLC is immune from claims for punitive damages and/or immune from a claim for failure to warn which claims are based on GM LLC's own conduct, kindly state the basis for that contention. If you contend that GM LLC is immune from product liability claims based on "Old GM's" failure to warn, kindly state the basis for that contention as well.

This is the second threatening letter we've received from you folks. As stated, we have not violated and have no intention of violating any court orders, or violating even any possible prospective court orders (which is what you seem to really be writing about), or even getting close to violating any such possible prospective court orders. That is why we spent considerable time composing our 9/9/15 reply to your previous threatening letter. *See attached.* You have not responded to that reply. Please do so, now. Please do so by direct and complete response to each enumerated paragraph of that 9/9/15 reply. Nor have you explained why you did not reply to our 9/9/15 letter. Please do so, now.

We do realize that you are apparently just sending out form letters to counsel for various plaintiffs, but your two letters have been accusations of misconduct, and threats. We take that very seriously.

A complete and usable response to this letter and to our 9/9/15 letter will enable us to draft the said Recast & Amended Complaint so as to remove any possible excuse you could try to conjure up to delay the specially set trial of this case by filing something in the Bankruptcy Court in New York. That is our objective. Any attempt by you to delay that special setting will be frivolous.

Sincerely.

BUTLER WOOTEN CHEELEY PEAK, LLP

James E. Butler, Jr.

JEBjr/bt
Enclosure
cc: Robert D. Cheeley, Esq.
Tedra L. Cannella, Esq.
Robert H. Snyder, Esq.

James E. Butler, Jr., P.C.*
Joel O. Wooten
Robert D. Cheeley
Brandon L. Peak
John C. Morrison III
Tedra C. Hobson
Robert H. Snyder**
David T. Rohwedder*
Morgan E. Duncan
Joseph M. Colwell
* admitted in GA & AL
** admitted in GA & FL

BWCP Butler Wooten Cheeley & Peak LLP

September 9, 2015

VIA EMAIL (sdavidson@kslaw.com and kasher@kslaw.com) and U.S. MAIL

Scott I. Davidson, Esq.
Jennifer A. Asher, Esq.
King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Re: *Veronica Alaine Fox v. General Motors LLC and Atlanta Auto Brokers, Inc.*, State Court of Cobb County, Georgia, Civil Action File No. 14A-3468-4

Dear Mr. Davidson and Ms. Asher:

In direct response to your email of September 8, 2015, which constitutes our first receipt of your "demand letter,"—yes, K&S demanding on behalf of GM that we act "within 3 days" is manifestly "inconvenient." We're not bankruptcy lawyers, and we will need to consult some bankruptcy law experts. We don't have time to complete that process this week or next week. In fact, I personally don't have time to study this matter much at all this week or next week.

It is unclear why GM has even sent its September 8th email in this case. GM claims that the Scheduling Order of a New York Bankruptcy Court, attached to its letter as Exhibit C, "appl[ies] to this matter." Davidson Letter at 3. That is incorrect.

The Scheduling Order itself identifies the cases to which it applies. *Fox v. GM* is not one of them. It is not one of the specifically enumerated cases set out in paragraphs one through eight. Nor is it a "lawsuit where New GM has previously sent a demand letter as authorized by the Judgment," as described on page 4. As GM knows, GM has never sent such a "demand letter" to Ms. Fox. Any representation that Plaintiff is governed by this scheduling order of the New York Bankruptcy Court is false.

In an attempt to work through this, however, let me ask you some questions that will aid our consideration of your "demand letter."

1. Who deputized you to perform "service" on us of the Judgment and Decision? Please explain your claim of authority.
2. Is there a ruling by the Bankruptcy Court specific to Veronica Fox? (I did not see her, or her case, mentioned in the exhibits to your letter.)
3. You are aware, are you not, that Ms. Fox has not filed an 'ignition switch' claim?

REPLY TO Atlanta:
2719 Buford Highway • Atlanta, GA 30324
404.321.1700 • 1.800.242.2962 • FAX 404.321.1713

Columbus Office:
P.O. Box 2766 • Columbus, GA 31902
105 13th Street • Columbus, GA 31901
706.322.1990 • 1.800.242.2962 • FAX 706.323.2962

www.butlerwooten.com

4. You are aware, are you not, that Ms. Fox has a claim for failure to warn under Georgia law, and that this wreck came after the bankruptcy date in 2009, and that the failure to warn came after that date, and that punitive damages are available under Georgia law on a failure to warn claim?
5. Does GM claim that Ms. Fox is subject to the jurisdiction of the New York Bankruptcy Court? If so, explain how that came to be, please.
6. More specifically, does GM claim that the Bankruptcy Court has jurisdiction and power to rule regarding what may, or may not, be asserted in Ms. Fox's Complaint?
7. Does GM contend that a failure by us, on behalf of Ms. Fox, to acquiesce to your demands within "three days" will constitute a violation of an Order of the Bankruptcy Court? If so, please explain the basis for that contention.
8. Are you, and is GM, threatening to ask the Bankruptcy Court to hold us, or Ms. Fox, in "contempt" for not acquiescing within "three days" to your demands?
9. What is the specific authority for your statement that we, that is to say, those to whom you addressed your letter, or Ms. Fox, "must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this demand letter"?
10. That statement is a demand that Ms. Fox, and we, voluntarily submit ourselves to the jurisdiction of the Bankruptcy Court. What is your authority for contending that we must do so?
11. Does "New GM" contend that any claim for punitive damages based upon "New GM's" own failure to warn of known dangers is defeated by the successor liability exclusion in the Bankruptcy Court rulings? If so, isn't it clear that "New GM" is therefore contending that the entirety of the products liability inclusion is swallowed up within the successor liability exclusion? Does "New GM" contend that any products liability claim can be characterized by "New GM" as a successor liability claim?

We can find nothing in the bankruptcy court's judgment or orders that would apply to this non-ignition switch claim. Your apparent threat against Ms. Fox for a so-called "continu[ing] violation of the Bankruptcy Court's rulings" is unfounded.

Sincerely,

BUTLER WOOTEN CHEELEY & PEAK LLP

Tedra L. Cannella

TLC/bt
Via Email to:
cc James E. Butler, Jr.
Robert D. Cheeley, Esq.

Robert H. Snyder, Esq.
William Hammill, Esq.
James C. Morton, Esq.
Richard H. Willis, Esq.
Kevin J. Malloy, Esq.
Thomas M. Klein, Esq.
C. Megan Fischer, Esq.
Carrie L. Christie, Esq.
Robert H. Burke, Esq.

Asher, Jennifer

From: Rob Snyder <Rob@butlerwooten.com>
Sent: Thursday, May 19, 2016 3:09 PM
To: Davidson, Scott; Asher, Jennifer; 'Thomas Klein'
Cc: Jim Butler; Tedra Cannella; Betht Telgenhoff; Julie Houston; 'William Hammill (ATL)'
Subject: Fox v. General Motors, LLC & Atlanta Auto Brokers, Case No.: 14A-3468-4

Mr. Davidson,

Please provide us with dates when you are available to sit for a deposition in the referenced matter.

Robert H. Snyder
Attorney at Law

Butler Wooten Cheeley & Peak LLP
2719 Buford Highway
Atlanta, GA 30324
(404) 321-1700
Email: rob@butlerwooten.com
Website: www.butlerwooten.com

Asher, Jennifer

From:	Jim Butler <jim@butlerwooten.com>
Sent:	Friday, May 20, 2016 12:00 PM
To:	Davidson, Scott; Asher, Jennifer; Thomas Klein; Kevin Malloy; Megan Fischer
Cc:	Bill Casey; Tedra Cannella; Rob Snyder; Will Hammill; Julie Houston; Betht Telgenhoff
Subject:	Re: Fox v. General Motors, LLC & Atlanta Auto Brokers, Case No.: 14A-3468-4

To GM LLC and Counsel for GM LLC:

We've thought further on this, and will be filing, today or tomorrow at the latest, "Plaintiff's First Recast and Amended Complaint. As stated in the letter of yesterday, that pleading will make it clear that Plaintiff does not seek punitive damages from GM LLC based on "Old GM's" conduct. That pleading will also make it clear that Plaintiff does not seek to hold GM LLC liable based on "Old GM's" breach of the duty to warn.

We will of course email that pleading to you.

We reiterate our request that you respond as soon as possible to our letters of 9/9/15 and 5/19/16 so that we can evaluate anything further you have to state and determine whether there is any need to file a "Second Recast and Amended Complaint." It is our object to render it totally unnecessary for GM LLC to try to do what it clearly seeks to do - file a petition in Bankruptcy Court for the sole purpose of delaying this case and avoiding the special trial setting of 9/13/16. Any such filing by GM LLC in Bankruptcy Court would be both frivolous and abusive.

James E. Butler, Jr.

The information contained in this electronic mail message is attorney privileged and confidential information intended only for the use of the individual or entity named. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (800) 233-4086 or by reply email and delete this message. Do not copy or distribute it to anyone other than the intended recipient.

On May 19, 2016, at 1:07 PM, Rob Snyder <Rob@butlerwooten.com> wrote:

> Please see the attached letter. Copies have also been sent by certified mail.
>
> **Robert H. Snyder**
> Attorney at Law
>
> Butler Wooten Cheeley & Peak LLP
> 2719 Buford Highway
> Atlanta, GA 30324
> (404) 321-1700
> Email: rob@butlerwooten.com
> Website: www.butlerwooten.com
>
> <image001.jpg>
>
> <2016-05-19 JEB to Klein, et al. responding to Davidson of 05-16-16.pdf>

Asher, Jennifer

From: Davidson, Scott
Sent: Friday, May 20, 2016 4:30 PM
To: Jim Butler; Asher, Jennifer; Thomas Klein; Kevin Malloy; Megan Fischer
Cc: Bill Casey; Tedra Cannella; Rob Snyder; Will Hammill; Julie Houston; Betht Telgenhoff
Subject: RE: Fox v. General Motors, LLC & Atlanta Auto Brokers, Case No.: 14A-3468-4

Dear Counsel:

We are in receipt of Plaintiff's Recast & Amended Complaint for Damages, filed today, as well as your letter from yesterday. We are reviewing both, and will respond to you as soon as possible.

Thank you
Scott I. Davidson | King & Spalding LLP

Tel: 212.556.2164 | Fax: 212.556.2222 | E-mail: sdavidson@kslaw.com
1185 Avenue of the Americas | New York, New York 10036

The information contained in this e-mail is personal and confidential and is intended for the recipient only. In the event that you have received this message in error, please delete it immediately and inform the sender as soon as possible.

From: Jim Butler [mailto:jim@butlerwooten.com]
Sent: Friday, May 20, 2016 12:00 PM
To: Davidson, Scott; Asher, Jennifer; Thomas Klein; Kevin Malloy; Megan Fischer
Cc: Bill Casey; Tedra Cannella; Rob Snyder; Will Hammill; Julie Houston; Betht Telgenhoff
Subject: Re: Fox v. General Motors, LLC & Atlanta Auto Brokers, Case No.: 14A-3468-4

To GM LLC and Counsel for GM LLC:

We've thought further on this, and will be filing, today or tomorrow at the latest, "Plaintiff's First Recast and Amended Complaint. As stated in the letter of yesterday, that pleading will make it clear that Plaintiff does not seek punitive damages from GM LLC based on "Old GM's" conduct. That pleading will also make it clear that Plaintiff does not seek to hold GM LLC liable based on "Old GM's" breach of the duty to warn.

We will of course email that pleading to you.

We reiterate our request that you respond as soon as possible to our letters of 9/9/15 and 5/19/16 so that we can evaluate anything further you have to state and determine whether there is any need to file a "Second Recast and Amended Complaint." It is our object to render it totally unnecessary for GM LLC to try to do what it clearly seeks to do - file a petition in Bankruptcy Court for the sole purpose of delaying this case and avoiding the special trial setting of 9/13/16. Any such filing by GM LLC in Bankruptcy Court would be both frivolous and abusive.

James E. Butler, Jr.

The information contained in this electronic mail message is attorney privileged and confidential information intended only for the use of the individual or entity named. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the communication is strictly prohibited. If you have

received this communication in error, please immediately notify us by telephone at (800) 233-4086 or by reply email and delete this message. Do not copy or distribute it to anyone other than the intended recipient.

On May 19, 2016, at 1:07 PM, Rob Snyder <Rob@butlerwooten.com> wrote:

Please see the attached letter. Copies have also been sent by certified mail.

Robert H. Snyder
Attorney at Law

Butler Wooten Cheeley & Peak LLP
2719 Buford Highway
Atlanta, GA 30324
(404) 321-1700
Email: rob@butlerwooten.com
Website: www.butlerwooten.com

<image001.jpg>

<2016-05-19 JEB to Klein, et al. responding to Davidson of 05-16-16.pdf>

Asher, Jennifer

From: Jim Butler
Sent: Friday, May 20, 2016 4:36 PM
To: Davidson, Scott
Cc: Asher, Jennifer; Thomas Klein; Kevin Malloy; Megan Fischer; Bill Casey; Tedra Cannella; Rob Snyder; Will Hammill; Julie Houston; Betht Telgenhoff
Subject: Re: Fox v. General Motors, LLC & Atlanta Auto Brokers, Case No.: 14A-3468-4

Good. And as Mr. Snyder emailed yesterday, we need dates when you are available to be deposed. We prefer to do that in Atlanta, where the case pends and where K&S has an office.

James E. Butler, Jr.

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Dear Counsel:

We are in receipt of Plaintiff's Recast & Amended Complaint for Damages, filed today, as well as your letter from yesterday. We are reviewing both, and will respond to you as soon as possible.

Thank you

Scott I. Davidson | King & Spalding LLP

Tel: 212.556.2164 | Fax: 212.556.2222 | E-mail: sdavidson@kslaw.com
1185 Avenue of the Americas | New York, New York 10036

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From: Jim Butler [mailto:jim@butlerwooten.com]
Sent: Friday, May 20, 2016 12:00 PM
To: Davidson, Scott; Asher, Jennifer; Thomas Klein; Kevin Malloy; Megan Fischer
Cc: Bill Casey; Tedra Cannella; Rob Snyder; Will Hammill; Julie Houston; Betht Telgenhoff
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Sent:	Monday, May 23, 2016 2:42 PM
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Cc:	Bill Casey; Erica Morton; 'Amir.Nowroozzadeh@Hickscasey.com'; Stephanie Sheppard; Tedra Cannella; Rob Snyder; Will Hammill; Julie Houston
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Re: *Veronica Alaine Fox v. General Motors LLC and Atlanta Auto Brokers, Inc.*, State Court of Cobb County, Civil Action File No. 14A-3468-4

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GM's object is perfectly clear: to conjure some excuse to file something in the Bankruptcy Court for the purpose of avoiding the special setting of this case for trial on September 13, 2016. It appears from GM's dawdling about your complaints – which has now stretched out over eight months – that perhaps GM is trying to delay trial of this case until after 2016. That would be judge-shopping. Our object in response is equally clear: we will seek to deprive GM of any excuse to avoid the special setting. Anything GM files in the Bankruptcy case regarding *Fox v. GM will be* frivolous and abusive.

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Sent: Thursday, May 26, 2016 2:11 PM
To: Davidson, Scott; Betht Telgenhoff; Asher, Jennifer; 'Thomas Klein'; Kevin Malloy; 'Megan Fischer'; CLC; RHB; 'brad.marsh@swiftcurrie.com'
Cc: Bill Casey; Erica Morton; 'Amir.Nowroozzadeh@Hickscasey.com'; Stephanie Sheppard; Tedra Cannella; Rob Snyder; 'Will Hammill'; Julie Houston
Subject: RE: Fox v. General Motors, LLC & Atlanta Auto Brokers, Case No.: 14A-3468-4

GM counsel:

When might we expect to receive full and direct replies to our two responsive letters AND a redline of our First Recast & Amended Complaint? We have scheduling/calendaring issues, in this and in other cases, and need to budget time to review promptly upon receipt, if possible.

Also kindly identify any pending case against GM LLC anywhere in the country with respect to which GM LLC has filed any pleading in the Bankruptcy Court seeking any kind of relief whatsoever, since the date of that Court's Order in the ignition switch case, wherein GM LLC alleged that something some plaintiff was doing was contrary to said Order. Identify by case name, court, case number, and name and contact information for the Plaintiff's counsel.

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KING & SPALDING

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Tel: (212) 556-2100
Fax: (212) 556-2222
www.kslaw.com

Scott Davidson
Direct Dial: 212-556-2164
sdavidson@kslaw.com

May 27, 2016

VIA E-MAIL TRANSMISSION
James E. Butler, Esq.
BUTLER, WOOTEN & CHEELEY & PEAK LLP
2719 Buford Highway
Atlanta, Georgia 30324

Re: ***Fox v. General Motors LLC, et al.***
Case No.: 14A 3468-4 ("Lawsuit")

Dear Mr. Butler:

This letter is in response to your letter, dated May 19, 2016 ("**May 19 Letter**"), as well as the Recast & Amended Complaint for Damages ("**Amended Complaint**") you circulated on May 20, 2016. While It appears that the revisions to the allegations in the Amended Complaint do address and correct certain issues, the Amended Complaint still does not fully comply with the Bankruptcy Court's rulings. Therefore, it remains New GM's position that (i) plaintiff in the Lawsuit is bound by the Judgment, dated December 4, 2015 ("**December Judgment**") entered by the Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), (ii) New GM cannot be sued for punitive damages in the Lawsuit, and (iii) any failure to warn claim cannot be based on New GM conduct.

As requested in your May 19 Letter, attached hereto as **Exhibit "A"** is a marked-up version of the Amended Complaint ("**Marked Complaint**"), identifying which allegations, claims and requests for damages New GM contends continue to violate the Bankruptcy Court's rulings. Please be aware that the comments contained in the Marked Complaint only address bankruptcy-related issues, and New GM reserves all of its rights to dispute liability for any claim set forth in the Amended Complaint, on any basis or ground, and nothing set forth in this letter or the Marked Complaint shall constitute an admission of any allegation, fact or liability, nor a waiver of any of New GM's rights and defenses.

A. Plaintiff Was on Notice of the Proceedings That Resulted in the December Judgment

Plaintiff was expressly put on notice of the proceedings leading to the December Judgment. As detailed in correspondence sent to you in September 2015, the Bankruptcy Court entered a Scheduling Order on September 3, 2015 ("**September 3 Scheduling Order**") that established a briefing scheduling to address, among other things, (i) whether plaintiffs may request punitive

damages against New GM based on the conduct of Old GM, and (ii) what type of claims are appropriately considered Assumed Liabilities, Retained Liabilities or Independent Claims. The September 3 Scheduling Order provided that "nothing in this Order is intended to nor shall preclude any other plaintiff's counsel (or *pro se* plaintiff), affected by the issues being resolved by this Court, from taking a position in connection with any such matters[.]" A copy of the September 3 Scheduling Order, as well as all pleadings filed by New GM in connection therewith, were served on plaintiff in September 2015.

Plaintiff was informed in previous correspondence that New GM believed plaintiff's request for punitive damages violated the Bankruptcy Court's rulings, and that the Bankruptcy Court was addressing this issue in connection with the issues identified in the September 3 Scheduling Order. Despite being on notice of the foregoing, and their effect on the Lawsuit, plaintiff did not file any pleading in response to the September 3 Scheduling Order or the issues raised therein, and did not appear at the hearing that took place on October 14, 2015.

Plaintiff in the Lawsuit is like other plaintiffs in similar lawsuits that assert inappropriate claims and requests for damages against New GM. While your Amended Complaint corrected certain deficiencies, it still does not fully comply with the Bankruptcy Court's rulings.

B. Plaintiff Is A Non-Ignition Switch Plaintiff

As stated in my May 10 Letter, plaintiff in this lawsuit is *not* an "Ignition Switch Plaintiff." The Judgment entered by the Bankruptcy Court on June 1, 2015 ("**June Judgment**") defines the term Ignition Switch Plaintiffs as those plaintiffs who assert claims against New GM based on the first three ignition switch recalls issued in February/March 2014. *See* June Judgment, at 1 n.1. The Lawsuit relates to a 2004 Cadillac SRX (which is not subject to the applicable recalls), and an alleged issue with the vehicle's roof that has nothing to do with the ignition switch.

Only Ignition Switch Plaintiffs can assert an "Independent Claim" against New GM. The Bankruptcy Court defined the term "Independent Claims" as "claims or causes of action ***asserted by Ignition Switch Plaintiffs*** against New GM (whether or not involving Old GM Vehicles) that are based solely on New GM's own, independent, post-Closing acts or conduct." June Judgment, ¶ 4 (emphasis added). The December Judgment also makes clear that Non-Ignition Switch Plaintiffs—like plaintiff in the Lawsuit—cannot assert Independent Claims against New GM:

> Plaintiffs of two types—1) ***plaintiffs whose claims arise in connection with vehicles without the Ignition Switch Defect***, and 2) Pre-Closing Accident Plaintiffs—are not entitled to assert Independent Claims against New GM with respect to vehicles manufactured and first sold by Old GM (an "**Old GM Vehicle**"). ***To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015***[.]

December Judgment, ¶ 14.

In sharp contrast to plaintiff, as a result of the December Judgment, the Lead Counsel (who litigated the issues resolved by the December Judgment in the Bankruptcy Court) amended their complaint in MDL-2543 pending before District Judge Furman to remove all Independent Claims relating to Non-Ignition Switch Plaintiffs that owned Old GM vehicles as of the 363 Sale. Clearly, Lead Counsel understood the impact of the December Judgment and, unlike the plaintiff, recognized the obligation to comply with the controlling Bankruptcy Court rulings.

Accordingly, since the plaintiff in this Lawsuit does not have a claim based on the Ignition Switch Defect, she is prohibited from asserting an Independent Claim against New GM. Furthermore, the Sale Order and Injunction entered by the Bankruptcy Court in 2009 remains in full force and effect. With respect to an Old GM vehicle (like the subject matter of the Lawsuit), either plaintiff's claim is an Assumed Liability of New GM, or a Retained Liability of Old GM (each as defined in the Sale Agreement, as amended). There are no other applicable categories for such claims.

C. Plaintiff Cannot Assert a Duty to Warn Claim Against New GM Based on New GM Conduct

The duty to warn claim contained in the Amended Complaint is based solely on New GM conduct. While the Bankruptcy Court found that a duty to warn claim could be an Independent Claim, that finding was limited to Ignition Switch Plaintiffs only. *See In re Motors Liquidation Co.*, 541 B.R. 104, 129 (Bankr. S.D.N.Y. 2015) ("The issue [whether a duty to warn can be an Independent Claim] is one of nonbankruptcy law—whether New GM, as an entity that did not manufacture or sell the vehicle, had a duty, enforceable in damages to vehicle owners, ***to notify people who had previously purchased Old GM vehicles of the Ignition Switch Defect.***" (emphasis added)).

As set forth above, the plaintiff in the Lawsuit is not an Ignition Switch Plaintiffs and, accordingly, she cannot assert an Independent Claim based on a duty to warn against New GM; such claims should be stricken from the Amended Complaint.

D. Plaintiff Cannot Seek Punitive Damages Against New GM

In the Amended Complaint, plaintiff seeks punitive damages against New GM in connection with her failure to warn claim, which is based solely on New GM conduct. As demonstrated above, she cannot assert such a claim against New GM, and any request for punitive damages on account of such a claim necessarily fails. In addition, to be clear, plaintiff cannot seek punitive damages against New GM based on assumed Product Liabilities (as defined in the First Amendment to the Sale Agreement). The Bankruptcy Court conclusively ruled that New GM did not assume punitive damages relating to Product Liabilities (as defined in the Sale Agreement). The December Judgment provides as follows:

> New GM did not contractually assume liability for punitive damages from Old GM. Nor is New GM liable for punitive damages based on Old GM conduct under any other theories, such as by operation of law. Therefore, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM.

Id., ¶ 6; *see also In re Motors Liquidation Co.*, 541 B.R. at 108 ("New GM did not contractually assume liability for punitive damages based on Old GM knowledge or conduct. Nor is New GM liable for punitive damages based on Old GM conduct under other theories, such as by operation of law as a result of New GM's assumption of certain liabilities for compensatory damages. Consequently, under the April Decision and Judgment, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM.").[1]

Accordingly, based on the Bankruptcy Court's explicit rulings in its Decision entered in November 2015, and in the December 2015 Judgment, New GM did not assume punitive damages in connection with assumed Product Liabilities, and it cannot be liable to a Non-Ignition Switch Plaintiff (like plaintiff in the Lawsuit) for any Independent Claim. Any request for punitive damages should be stricken from the Amended Complaint.

E. Conclusion

Please let us know as soon as possible whether plaintiff will take the required action and fully comply with the Bankruptcy Court's rulings.

Very truly yours,

Scott I. Davidson

SD/hs

cc: Thomas Klein, Esq. (via e-mail transmission)
Bill Casey, Esq. (via e-mail transmission)

[1] While you cite to paragraph 7 of the December 2015 Judgment in your May 19 Letter, this paragraph clearly applies only to Ignition Switch Plaintiffs: "A claim for punitive damages with respect to a post-Sale accident ***involving vehicles manufactured by Old GM with the Ignition Switch Defect*** may be asserted against New GM to the extent—***but only to the extent—it relates to an otherwise viable Independent Claim*** and is based solely on New GM conduct or knowledge . . . ."

EXHIBIT A

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

VERONICA ALAINE FOX,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CIVIL ACTION FILE
	*	
	*	NO. 14A 3468-4
GENERAL MOTORS LLC and	*	
ATLANTA AUTO BROKERS, INC.,	*	
	*	
Defendants.	*	

RECAST & AMENDED COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Veronica Fox and files this Complaint for Damages against Defendants General Motors LLC ("GM LLC") and Atlanta Auto Brokers, Inc. ("AAB"), and respectfully shows the following:

INTRODUCTION

On November 12, 2013, Plaintiff Veronica Fox was rendered quadriplegic in a rollover wreck in the General Motors 2004 SRX she was driving. She was properly restrained in the vehicle. When the SRX rolled over, the top of the roof literally came off the vehicle, and the remaining roof structure buckled and collapsed on top of her. Her injuries were caused by the resulting roof crush that occurred during the rollover. Her injuries were entirely preventable. Her injuries would not have happened had General Motors Corporation ("GM Corp.") designed the 2004 SRX to provide proper protection for the occupants in a foreseeable rollover wreck. ~~They would not have happened if General Motors LLC ("GM LLC") would have warned her of the dangers of the roof design~~.

GM Corp. ~~and GM LLC~~ knew and expected that its vehicles ***would be*** involved in rollovers. GM Corp., like other automakers such as GM LLC, had the resources to design and manufacture automobiles that would provide proper protection to the occupants in a rollover. But GM Corp. designed the 2004 Cadillac SRX with a roof structure that *it knew* would utterly fail to provide such protection: the roof panel was made almost entirely of glass; the roof was secured to the vehicle by nothing but glue, with no welds or other mechanical fasteners; predictably, the entire, glued-on roof came off during the rollover, leaving a gaping hole in the top of the vehicle and depriving the roof system of the support the top of the roof should provide; there was little to no lateral support going across the roof to help support the sides of the vehicle when the roof panel came off during the roll; and the remaining roof structure was so inadequate, it buckled and crushed onto Veronica Fox's head, catastrophically and permanently injuring her. ~~GM LLC knew all these facts. Yet, it chose not to warn Veronica Fox, or anyone else, of the dangerous design of the 2004 SRX.~~

Plaintiff files this action to recover for the injuries caused by GM Corp.'s decision to adopt an unreasonably dangerous roof design, and for ~~GM LLC's and~~ Atlanta Auto Broker Inc.'s ("AAB") election not to warn citizens including Plaintiff Fox of the dangers of the 2004 SRX.

I. PARTIES, JURISDICTION, VENUE, & SERVICE OF PROCESS

1.

Plaintiff Veronica Fox is a citizen and resident of the State of Georgia. Plaintiff is subject to the jurisdiction of this Court.

2.

Defendant GM LLC is a foreign corporation organized and incorporated under the laws of Delaware, with its principal place of business located at 300 Renaissance Center, Detroit,

Michigan 48265. GM LLC, like GM Corp., is engaged in the business of designing, manufacturing, marketing, promoting, advertising, distributing, and selling automobiles, trucks, SUVs, and other types of vehicles in the State of Georgia, throughout the United States, and elsewhere.

3.

GM LLC is subject to the jurisdiction of this Court because it transacts business in this State and maintains a registered agent in this State: CSC of Cobb County, Inc., 192 Anderson Street S.E., Suite 125, Marietta, Georgia 30060. GM LLC may be served with legal process there.

4.

Venue is proper in Cobb County as to Defendant GM LLC under O.C.G.A. § 14-2-510 and GA. CONST. art. VI, § 2, ¶ VI, because Cobb County is where Defendant GM LLC maintains a registered agent.

5.

Defendant AAB is a domestic corporation organized and incorporated under the laws of Georgia, with its principal place of business located at P.O. Box 3262, Alpharetta, Georgia 30023. AAB is engaged in the business of buying, selling, and inspecting used automobiles in the State of Georgia.

6.

Defendant AAB is subject to the jurisdiction of this Court because it is incorporated in this State, it transacts business in this State, and maintains a registered agent in this State: Joe

Milligan, 487 Cobb Parkway, SE, Marietta, Georgia 30060. AAB may be served with legal process there.

7.

Venue is proper in Cobb County as to Defendant AAB under O.C.G.A. § 14-2-510 and GA. CONST. art. VI, § 2, ¶ VI, because Cobb County is where Defendant AAB maintains a registered agent and under GA. CONST. art. 6, § 2, ¶ IV because it is a joint tortfeasor with Defendant GM LLC.

II. OPERATIVE FACTS

8.

On November 12, 2013, at around 2:00 a.m., Veronica Alaine Fox was the restrained driver of a 2004 Cadillac SRX designed, manufactured, and sold by GM Corp. (VIN: 1GYDE63A740113793) ("the subject SRX" or "subject vehicle"). Carl Coward was a restrained passenger in the front right seat. The subject SRX was traveling north on I-285, past the intersection with Martin Luther King Dr.

9.

Plaintiff Veronica Fox was properly seated in the driver's seat, wearing her seat belt.

10.

While traveling down the highway, the SRX left the roadway. The SRX rolled over and came to rest off the shoulder north of Martin Luther King Dr.

11.

GM Corp. manufactured, designed, marketed, and distributed the subject vehicle with a defective roof which was unable to withstand the forces of this foreseeable and survivable event. As the direct and proximate result of the defects in the roof structure of the subject vehicle, the

roof panel came completely off during the wreck and the remaining structure crushed down on Plaintiff Veronica Fox during this incident, rendering her a quadriplegic.

12.

Defendant AAB inspected the vehicle and sold it to Plaintiff shortly before the wreck occurred. Defendant AAB had a duty to warn Veronica Fox of the danger posed by the SRX roof. AAB breached that duty.

13.

The defects and failures of the subject vehicle, combined with the acts and omissions of GM Corp~~, GM LLC~~, and AAB, caused Veronica Fox's injuries.

14.

As a direct and proximate result of the subject vehicle's defects and failures and the tortious acts and omissions of GM Corp.~~, GM LLC~~, and AAB, Plaintiff Veronica Fox endured, continues to endure, and will endure in the future physical and emotional pain and suffering.

15.

GM Corp. designed, tested, manufactured, marketed, distributed, and sold the subject SRX, thereby placing it into the stream of commerce.

16.

The subject SRX was defective, unreasonably dangerous, and not fit for its ordinary use when manufactured as well as at the time of the subject incident because (a) the design GM Corp. chose for the roof structure did not offer proper protection to occupants in foreseeable crashes; (b) the risks of GM Corp.'s chosen design outweighed the utility of the design; and (c) GM Corp. did not implement safer, feasible, and practicable alternative designs that would have prevented Plaintiff Veronica Fox's injuries.

17.

GM Corp. could have reasonably foreseen and did, in fact, foresee the occurrence of rollovers such as the one described in this Complaint.

18.

But for GM Corp.'s negligent and defective design of the SRX, and the vehicle's failure to offer proper crash protection to occupants in foreseeable wrecks, Veronica Fox would not have been seriously injured in this wreck.

19.

At the time the subject SRX was manufactured and at all times since then, GM Corp. has had actual knowledge from, among other things, its notice of real-world incidents involving its vehicles, its own testing, and the laws of physics, that when a roof lacks sufficient structural crashworthiness, occupants are highly vulnerable to being injured, paralyzed, or killed in a rollover.

20.

Despite its knowledge set forth above, GM Corp. consciously designed the 2004 SRX, and other GM Corp. vehicles equipped with the same or similar performing roofs, so that occupants would be subject to injury from roof crush.

21.

Despite knowing at the time the subject Cadillac SRX was manufactured that safer alternative designs were technologically feasible, economically practicable, and fundamentally safer, GM Corp. wantonly and recklessly chose not to implement any of those alternative designs in the subject SRX and instead chose a design GM Corp. knew would result in preventable injuries and deaths in foreseeable wrecks.

22.

GM Corp.'s reckless and wanton conduct constituted disregard for the life and safety of Veronica Fox, and the lives and safety of the motoring public generally. GM Corp.'s reckless and wanton conduct also manifests a conscious indifference to the foreseeable consequences of that conduct to motorists like Veronica Fox.

23.

In 2009, after GM Corp. filed for Chapter 11 bankruptcy protection, Defendant GM LLC purchased ~~the~~ assets of GM Corp., including GM Corp.'s books and records.

24.

As part of its 2009 purchase of GM Corp., Defendant GM LLC expressly assumed liability for product liability claims (as set forth in the Sale Agreement and rulings by the Bankruptcy Court) against GM Corp. that arose after the bankruptcy sale.

25.

After the bankruptcy sale, Defendant GM LLC employed ~~the~~ engineers who designed the 2004 SRX roof, and GM LLC possessed all relevant knowledge, books, and records regarding the 2004 SRX roof design. In short, GM LLC acquired all knowledge regarding the 2004 SRX's defective roof from GM Corp.

26.

~~Defendant GM LLC could have reasonably foreseen and did, in fact, foresee the occurrence of rollovers such as the one described in this Complaint.~~

27.

~~Since the bankruptcy sale, Defendant GM LLC, like GM Corp., has had actual knowledge from, among other things, the knowledge of its engineers, the records and books it acquired from GM Corp., its notice of real-world incidents involving its and GM Corp.'s~~

vehicles, its and GM Corp.'s testing, GM LLC's decision to substantially strengthen the roof in the 2010 SRX, and the laws of physics, that when a roof lacks sufficient structural crashworthiness, occupants are highly vulnerable to being injured, paralyzed, or killed in a rollover.

28.

Since the bankruptcy sale, Defendant GM LLC, like GM Corp., has had actual knowledge from, among other things, the knowledge of its engineers, the records and books it acquired from GM Corp., its notice of real-world incidents involving its and GM Corp.'s vehicles, its and GM Corp.'s testing, GM LLC's decision to substantially strengthen the roof in the 2010 SRX, and the laws of physics, that the 2004 SRX roof was unreasonably dangerous and defective.

29.

Despite GM LLC's duty to warn and its knowledge of a need to warn the public, Defendant GM LLC failed at the time of the bankruptcy sale—and all times since—to adequately warn the consuming public, and Plaintiff in particular, of the dangers in a reasonably foreseeable wreck presented by the design of the SRX roof.

30.

Despite the knowledge set forth in the paragraphs above, Defendant GM LLC and GM Corp. wantonly and recklessly continued to sell the vehicle to the consuming public and maintained it in the stream of commerce without a warning, recall, or remedy of the vehicle's defects.

31.

~~Defendant GM LLC's and~~ GM Corp.'s reckless and wanton conduct constituted disregard for the life and safety of Veronica Fox, and the lives and safety of the motoring public generally. ~~GM LLC's reckless and wanton conduct also manifests a conscious indifference to the foreseeable consequences of that conduct to motorists like Veronica Fox.~~

32.

But for the tortious conduct of GM Corp. ~~and GM LLC,~~ Plaintiff Veronica Fox would not have been seriously injured in this wreck.

33.

As a direct and proximate result of GM Corp. ~~and GM LLC~~'s tortious conduct, Plaintiff Veronica Fox endured, continues to endure, and will endure in the future physical and emotional pain and suffering.

34.

No person other than Defendant GM LLC and Defendant AAB is liable for the injuries and damages sustained by Veronica Fox.

35.

Plaintiff's injuries and damages were proximately caused by the tortious acts and omissions of GM Corp.~~, GM LLC,~~ and AAB. The tortious acts and omissions of GM Corp.~~, GM LLC,~~ and AAB that caused the personal injuries to Veronica Fox are described more fully and specifically in the paragraphs below.

III. SPECIFIC COUNTS

COUNT ONE

Strict Liability of General Motors LLC

36.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 35 of this Complaint.

37.

GM Corp. is strictly liable to Plaintiff under O.C.G.A. § 51-1-11 and other applicable law because the risks inherent in the design of the roof structure in the 2004 Cadillac SRX outweighed any utility of the chosen design, thereby rendering the vehicle defective, unreasonably dangerous, and not reasonably suited to the use for which it was intended. The defects in the SRX include, but are not limited to, the following:

a. The roof structure in the SRX failed to offer proper protection to occupants like Veronica Fox during foreseeable rollover events;

b. The roof panel was made almost entirely of glass with a narrow rim of fiber glass;

c. The roof panel was attached to the vehicle by nothing but glue;

d. During the rollover, the entire roof panel came completely off the vehicle, leaving a gaping hole in the roof of the vehicle;

e. GM Corp. knew that the glued-on glass roof would not protect occupants in a rollover;

f. Despite this knowledge, GM Corp. did not design the remaining structure to protect occupants in a rollover;

g. GM Corp. designed the 2004 SRX with a strength-to-weight ratio of 1.9, which earned it the lowest possible rating for roof strength by the Insurance Institute for Highway Safety. *See* Exhibit A, IIHS Website, http://www.iihs.org/iihs/ratings/ratings-info/roof-strength-test (last visited May 19, 2016). According to IIHS, a strength-to-weight ratio of 1.9 is not "good," "acceptable," or even "marginal"—it is "**poor.**" *Id.*;

h. GM Corp. did not adequately test the performance of the SRX's roof structure to determine whether prospective owners, users, and occupants of the 2004 SRX would be exposed to an unreasonable risk of physical harm during rollover events;

i. GM Corp. knew, or should have known, from the testing that was performed on the SRX and other GM Corp. vehicles with the same or similar roofs, from real world incidents, and from the laws of physics, that the SRX roof would fail, and GM Corp. knew that serious injury to vehicle occupants could result;

j. The SRX does not contain, and is not accompanied by, warnings to prospective owners, users, or occupants, including Plaintiff, either at the time of sale or post-sale, of the unreasonable risk of physical harm associated with the design of the roof structure of the 2004 SRX;

k. The SRX does not contain, and is not accompanied by, adequate warnings to prospective owners, users, or occupants, including Plaintiff, either at the time of sale or post sale, of the unreasonable risk of physical harm associated with the design of the roof structure of the 2004 SRX.

(as set forth in the Sale Agreement and rulings by the Bankruptcy Court).

38.

Defendant GM LLC assumed liability for product liability claims against GM Corp. that arose after the bankruptcy sale. Plaintiff's strict liability claims against GM Corp. are properly asserted against GM LLC.

39.

The defects in the 2004 Cadillac SRX, in concert with the acts and omissions of ~~Defendants GM LLC and~~ AAB, proximately caused Plaintiff's injuries and damages.

40.

Defendants are liable for the injuries and damages Plaintiff suffered.

COUNT TWO

Negligence of General Motors LLC

41.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 40 of this Complaint.

42.

GM Corp. owed a duty to the consuming public in general, and Plaintiff in particular, to exercise reasonable care to design, test, manufacture, inspect, market, and distribute a product free of unreasonable risk of harm to owners, users, and occupants.

43.

At the time GM Corp. manufactured, marketed, distributed, and sold the 2004 SRX, GM Corp. could reasonably have foreseen and did, in fact, foresee the occurrence of rollover events such as the one described in this Complaint.

44.

GM Corp. breached its duty to exercise reasonable care as set forth in the paragraphs above.

45.

In concert with the acts and omissions of Defendant AAB ~~and GM LLC~~, GM Corp.'s negligence proximately caused Plaintiff's injuries and damages.

46.

Defendant GM LLC assumed liability for product liability claims against GM Corp. that arose after the bankruptcy sale (as set forth in the Sale Agreement and rulings by the Bankruptcy Court). Plaintiff's negligence claims against GM Corp. are properly asserted against GM LLC.

47.

Defendants are liable for the injuries and damages suffered by Plaintiff.

~~COUNT THREE~~

~~General Motors LLC's Failure to Warn~~

~~48.~~

~~Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 47 of this Complaint.~~

~~49.~~

~~GM LLC could reasonably have foreseen and did, in fact, foresee the occurrence of rollover events such as the one described in this Complaint.~~

~~50.~~

~~GM LLC owed a duty to the consuming public in general, and to Plaintiff in particular, to warn of the dangers arising from the design of the SRX.~~

51.

GM LLC knew after the bankruptcy sale about the danger of the roof of the 2004 SRX, but chose not to warn the public or Plaintiff about that danger.

52.

In concert with the acts and omissions of Defendant AAB and GM Corp., GM LLC's failure to warn proximately caused Plaintiff's injuries and damages.

53.

Defendants are liable for the injuries and damages Plaintiff suffered.

COUNT FOUR

Punitive Damages

54.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 53 of this Complaint.

55.

GM LLC acted with conscious indifference to the safety and well-being of the public in failing to effectively repair or warn about the dangers of the 2004 SRX. GM LLC knew or should have known of those dangers. GM LLC purchased all GM Corp.'s books and records revealing the defective and dangerous design of the 2004 SRX roof. GM LLC employed the same engineers who designed and knew about the defective and dangerous design of the 2004 SRX roof. Despite knowing of the dangers posed by the 2004 SRX, GM LLC acted wantonly and with conscious indifference to the safety and well-being of the public, as defined by O.C.G.A. § 51-12-5.1, in failing to repair or warn about the dangers of the 2004 SRX.

56.

Defendant GM LLC's own failure to warn, which occurred after the June 2009 bankruptcy sale, was so egregious that it rises to the level of conscious indifference to the safety and well-being of the public under O.C.G.A. § 51-12-5.1. Such misconduct warrants the imposition of punitive damages against GM LLC.

COUNT FIVE

Statute of Repose

57.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 56 of this Complaint.

58.

The willful and wanton misconduct by GM Corp. and GM LLC referenced in this Complaint precludes the application of any statute of repose as a defense. Georgia's statute of repose does not bar claims when the defendant acted with willful and wanton disregard of the dangers of its conduct.

59.

GM LLC's failure to warn of the dangers referenced in this Complaint precludes the application of any statute of repose as a defense. Georgia's statute of repose does not bar claims when the defendant failed to warn of the dangers which were known to or should have been known to the defendant.

COUNT SIX

Atlanta Auto Brokers, Inc.'s Failure to Warn

60.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 59 of this Complaint.

61.

Defendant AAB sold the subject 2004 Cadillac SRX to Plaintiff Veronica Fox on or about September 27, 2013, less than two months before the wreck that is the subject of this Complaint.

62.

AAB is in the business of buying, selling, and inspecting cars. It has been in that business for over 20 years. As a result of this extensive experience, AAB has specialized and superior knowledge about cars, car repair and parts, vehicle safety, and vehicle quality.

63.

Before selling the vehicle to Plaintiff, Defendant AAB undertook to inspect the vehicle for Plaintiff's benefit. It therefore had a duty to conduct its inspection non-negligently.

64.

Plaintiff originally sought to purchase a Chevrolet Suburban at AAB, but AAB's inspection had revealed the Suburban needed repairs. AAB therefore discouraged Plaintiff from purchasing that vehicle. AAB told Plaintiff that the SRX had passed its inspection. AAB therefore encouraged her to choose the SRX instead of the Suburban. Plaintiff relied upon AAB's inspection and its statements about the inspection when she chose to purchase the subject SRX.

65.

AAB also detailed the car before selling it Plaintiff. AAB's inspection and detail of the vehicle either did or should have revealed the dangers of the SRX roof, including but not limited to the fact that the roof was made almost entirely of glass and was attached by nothing but glue. A lay person like Plaintiff would not know that the roof was made of glass because the rear panels of glass were concealed from the inside by the headliner. Plaintiff, in fact, did not know that the roof was made almost entirely of glass until after the wreck occurred.

66.

Defendant AAB encouraged Plaintiff to purchase the SRX because of the sunroof. AAB repeatedly emphasized the sunroof as a selling feature because it extended to the second row of seats. AAB's statements about the sunroof were incomplete and misleading because AAB did not inform Plaintiff that the glass actually extended almost the entire length of the vehicle and because the structure of the roof was itself a deadly design defect.

67.

AAB provided safety warnings to Plaintiff about the use of the sunroof, advising her not to allow passengers to "hang out of the sunroof." AAB's warnings were incomplete and misleading because they suggested that the only danger associated with the roof was the danger of passengers being injured as a result of a decision to "hang out of the sunroof."

68.

Defendant AAB knew or should have known that the SRX roof would not protect occupants in the event of a rollover wreck and therefore had a duty to warn Plaintiff about the dangers created by the SRX roof. AAB's actual or constructive knowledge was a result of its superior knowledge of vehicle parts, quality, and safety, generally—and the SRX's parts, quality,

and safety, specifically; its inspection of the vehicle; and its knowledge about the SRX roof and sunroof.

69.

Defendant AAB knew or reasonably should have known that the SRX roof was dangerous and could result in serious or catastrophic injury or death in foreseeable rollover wrecks.

70.

Plaintiff would not have purchased the SRX had she been informed of and known about the dangers of the roof.

71.

In concert with the acts and omissions of GM Corp. ~~and GM LLC~~ AAB's failure to warn proximately caused Plaintiff's injuries and damages.

72.

Defendant AAB is liable for the injuries and damages Plaintiff suffered.

DAMAGES & PRAYER FOR RELIEF

73.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 72 of this Complaint.

74.

As a direct result of the defective condition of the 2004 SRX, GM Corp.'s negligence, ~~GM LLC's failure to remedy or give appropriate warnings about the vehicle,~~ and AAB's failure to warn about the vehicle, Plaintiff Veronica Fox has suffered severe and permanent personal injuries, including quadriplegia.

75.

Plaintiff Veronica Fox seeks damages from Defendants in an amount to be determined by the enlightened conscience of the jury and as demonstrated by the evidence, for all elements of compensatory damages allowed by Georgia law. Plaintiff's injuries are permanent, and damages sought include the following:

a. all components of the mental and physical pain and suffering Veronica Fox endured upon impact and up until the present time;

b. all components of the mental and physical pain and suffering Veronica Fox will endure in the future;

c. past and future loss of enjoyment of life; and

d. all past and future economic losses, including medical bills, medical expenses, other necessary expenses for the care and treatment of Veronica Fox, including household services.

~~e. Punitive damages against Defendant GM LLC, pursuant to O.C.G.A. § 51-12-5.1, in an amount to be determined by the enlightened conscience of the jury to be sufficient to punish GM LLC for the harm caused to them and to deter GM LLC from similar misconduct.~~

76.

WHEREFORE, Plaintiff prays for the following relief:

a. That summons issue and service be perfected upon Defendants requiring them to appear before this Court and answer this Complaint for Damages;

b. That judgment be entered against Defendants;

c. That Plaintiff Veronica Fox recovers all elements of compensatory damages, including general and special damages, against Defendants;

d. ~~That Plaintiff Veronica Fox recovers punitive damages against Defendant GM LLC;~~

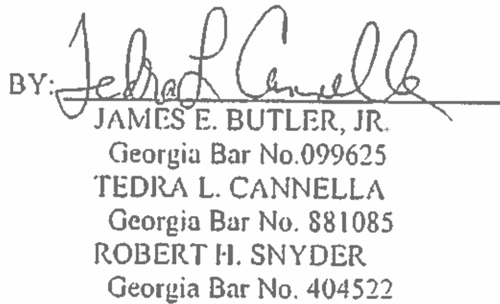
e. That all costs be cast against Defendants; and

f. That Plaintiff has such other and further relief as this Court deems just and proper.

This 20th day of May, 2016.

Respectfully submitted,

BUTLER WOOTEN & CHEELEY & PEAK LLP



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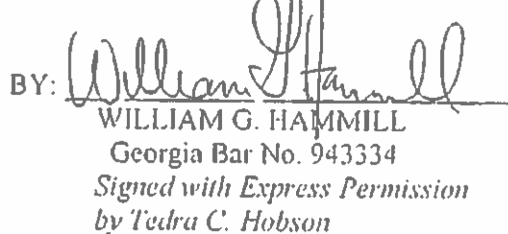
KENNETH S. NUGENT PC



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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

About our tests

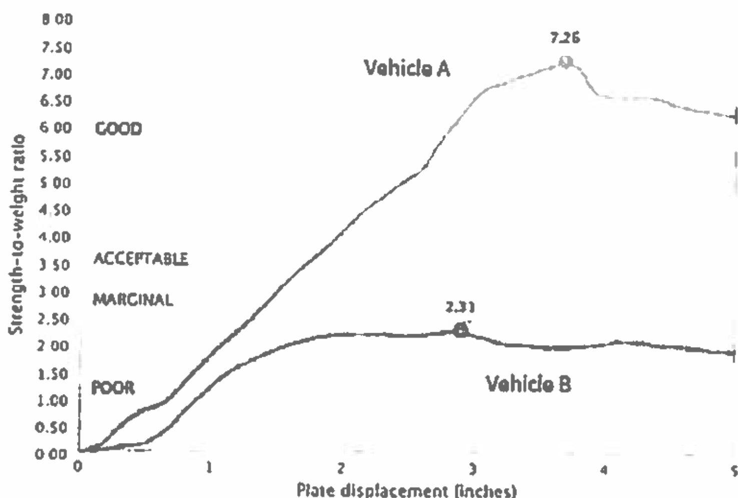
IIHS evaluates a vehicle's crashworthiness with the help of five tests. moderate overlap front, small overlap front, side, roof strength and head restraints & seats. For front crash prevention ratings, the Institute conducts low- and moderate-speed track tests of vehicles with automatic braking systems. IIHS also conducts evaluations of headlight systems and of the child seat attachment hardware known as LATCH. The descriptions below explain how each test is conducted and how the results translate into ratings

Thousands of people are killed each year in rollovers. The best way to prevent these deaths is to keep vehicles from rolling over in the first place. Electronic stability control is significantly reducing rollovers, especially fatal single-vehicle ones. When vehicles do roll, side curtain airbags help protect the people inside, and belt use is essential. However, for these safety technologies to be most effective, the roof must be able to maintain the occupant survival space when it hits the ground during a rollover. Stronger roofs crush less, reducing the risk that people will be injured by contact with the roof itself. Stronger roofs also can prevent occupants, especially those who aren't using safety belts, from being ejected through windows, windshields or doors that have broken or opened because the roof has deformed.

In the test, the strength of the roof is determined by pushing a metal plate against one side of it at a slow but constant speed. The force applied relative to the vehicle's weight is known as the strength-to-weight ratio. This ratio varies as the test progresses. The peak strength-to-weight ratio recorded at any time before the roof is crushed 5 inches is the key measurement of roof strength.

A good rating requires a strength-to-weight ratio of at least 4. In other words, the roof must withstand a force of at least 4 times the vehicle's weight before the plate crushes the roof by 5 inches. For an acceptable rating, the minimum required strength-to-weight ratio is 3.25. For a marginal rating, it is 2.5. Anything lower than that is poor.

The figure below shows sample results for two vehicles — one rated good and one rated poor. Peak force for Vehicle A is 7.26. Since that number is higher than 4, the vehicle is rated good. Peak force for Vehicle B is 2.31. Since that number is lower than 2.5, the vehicle is rated poor.



The following video shows how the roof strength test is conducted. In this test of the 2010 Buick LaCrosse, the peak force is 19,571 pounds for a strength-to-weight ratio of 4.90 and a good rating. The playback speed of this video has been increased. The plate normally crushes at a rate of about 1/8 inch per second.

In every test, the roof is crushed 5 inches. What varies — and can't be seen in a video — is the force used by the machine to achieve that degree of crush. To demonstrate how roof strength can vary and what those differences mean for people inside a vehicle during a rollover, IIHS conducted a demonstration in which two vehicles with different roof strength ratings were subjected to identical force. This video shows what happened when the 2009 Volkswagen Tiguan, rated good for roof strength, and the 2008 Kia Sportage, rated poor, were each subjected to a crush force of 15,000 pounds.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record with a copy of the foregoing pleading by depositing it in the United States Mail with adequate postage affixed thereon and addressed as follows:

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Marietta, GA 30060-1533

This 20th day of May, 2016.

BUTLER WOOTEN CHEELEY & PEAK LLP

BY:
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Georgia Bar No. 881085
ROBERT H. SNYDER
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Exhibit P

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September 1, 2015

Via E-Mail And Overnight Delivery
Tab Turner, Esq.
Turner & Assoc.
4705 Somers Ave., S-100,
North Little Rock, AR 72116

Re: ***Chapman v. General Motors LLC, et al.***
Case No.: 60-CV-2015-3292 (Cir. Ct. of Pulaski Cty., AK)

Dear Counsel:

Reference is made to the *Original Complaint* ("**Pleading**"), filed in the above-referenced lawsuit ("**Lawsuit**"), which seeks to hold General Motors LLC ("**New GM**") liable for various claims, as well as seeks punitive damages relating to vehicles/parts manufactured and sold by Motors Liquidation Company (f/k/a General Motors Corporation) ("**Old GM**"). From a review of the Pleading, it appears that Plaintiff is making allegations and seeking punitive damages from New GM that arise from the conduct of Old GM (and not New GM). The attempt to seek such punitive damages from New GM is a violation of the Sale Order and Injunction (as herein defined) entered by the Bankruptcy Court (as herein defined). *See Decision on Motion to Enforce Sale Order*, *In re Motors Liquidation Company*, 529 B.R. 510 (Bankr. S.D.N.Y 2015) ("**Decision**"), as well as the Judgment entered by the Bankruptcy Court on June 1, 2015 ("**Judgment**").[1] As such, the request for punitive damages cannot be maintained against New GM.

The Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended) ("**Sale Agreement**"), which was approved by an Order, dated July 5, 2009 ("**Sale Order and Injunction**"), of the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), is clear in this regard. Specifically, under the Sale Agreement, New GM assumed only three categories of liabilities for vehicles and parts sold by Old GM: (a) post-sale accidents or incidents[2] involving Old GM vehicles causing personal injury, loss of life or property

[1] A copy of the Judgment is annexed hereto as **Exhibit "A."** The Judgment memorializes the rulings in the Decision, a copy of which is annexed hereto as **Exhibit "B."**

[2] According to the Pleading, Plaintiff is asserting, among others, product liability claims resulting from an accident that took place after the closing of the sale from Old GM to New GM. New GM assumed "Product Liabilities" (as defined in the Sale Agreement, as amended) for post-363 Sale accidents. As such, to the extent the Pleading asserts assumed Product Liabilities, those aspects of the Pleading would not be barred by the Sale Order and Injunction, the Sale Agreement or the Judgment. Note, however, that New GM disputes any and all liability for such claims.

damage; (b) repairs provided for under the "Glove Box Warranty"—a specific written warranty, of limited duration, that only covers repairs and replacement of parts and not monetary damages; and (c) Lemon Law claims (as defined in the Sale Agreement) essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles and parts sold by Old GM were "Retained Liabilities" of Old GM. *See* Sale Agreement § 2.3(b). To the extent the request for punitive damages contained in the Pleading is based on a successor liability theory, such liabilities were not assumed by New GM and, accordingly, New GM cannot be liable to the Plaintiff under that theory of recovery.

In addition, the Sale Agreement made clear that while New GM assumed liabilities for post-sale accidents involving Old GM vehicles directly causing personal injury, loss of life, or property damage, that obligation was for the assumption of compensatory damages only – not punitive damages. The Sale Agreement defines "damages" as all Losses other than punitive damages. Moreover, the word "directly" in the definition of Product Liabilities was specifically used to make clear that the only liabilities assumed by New GM for post-sale accidents are those damages directly related to the accident. Punitive damages which are assessed to deter future wrongful conduct of Old GM, unrelated to the specific accident, was never something that New GM assumed. The Bankruptcy Court has previously found that New GM only assumed the liabilities that were commercially necessary for its post-sale business activities. Punitive damages assessed to punish alleged pre-sale wrongful conduct of Old GM would never be something considered "commercially necessary." In fact, based on the subordinated priority of punitive damage claims in bankruptcy, even Old GM would not have been required to pay such damages. And, clearly, New GM did not assume an obligation that Old GM would never have been required to pay.

Various provisions of the Sale Agreement and the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities, as defined in the Sale Agreement) predicated on Old GM conduct, relating to the operation of Old GM's business, or the production of vehicles and parts before July 10, 2009. *See, e.g.*, Sale Order and Injunction ¶¶ AA, 8, 46. The Sale Order and Injunction enjoins parties from bringing actions against New GM for unassumed Old GM liabilities. *Id.*, ¶ 8. It also provides that the Bankruptcy Court retains "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [New GM] against any of the [liabilities that it did not expressly assume under the Sale Agreement]." *Id.*, ¶ 71. If there is any ambiguity with respect to any of the foregoing -- which there should not be -- the exclusive forum to clarify that ambiguity is the Bankruptcy Court. The Bankruptcy Court has consistently exercised jurisdiction over issues such as those raised in the Lawsuit.[3]

The Bankruptcy Court recently issued the Judgment, which reiterated that "[e]xcept for Independent Claims and Assumed Liabilities (if any), all claims and/or causes of action that the Ignition Switch Plaintiffs may have against New GM concerning an Old GM vehicle or part seeking to impose liability or damages based in whole or in part on Old GM conduct (including, without limitation, on any successor liability theory of recovery) are barred and enjoined pursuant to the

---

[3] *See, e.g.*, *Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-09803, 2013 WL 620281 (Bankr. S.D.N.Y. Feb. 19, 2013); *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–00509, 2012 WL 1339496 (Bankr. S.D.N.Y. Apr. 17, 2012), *aff'd,* 500 B.R. 333 (S.D.N.Y. 2013), *aff'd*, No. 13-4223-BK, 2014 WL 4653066 (2d Cir. Sept. 19, 2014). *See also Celotex Corp. v. Edward*, 514 U.S. 300 (1995).

Sale Order . . . ." Judgment ¶ 9; *see also* Decision, 529 B.R. at 528 ("Claims premised in any way on Old GM conduct are properly proscribed under the Sale Agreement and the Sale Order, and by reason of the Court's other rulings, the prohibitions against the assertion of such claims stand."). The reasoning and rulings set forth in the Judgment and Decision are equally applicable to the Lawsuit. To the extent that the Pleading requests punitive damages based on Old GM conduct, such a request is proscribed. Accordingly, the Pleading should be amended so that it is consistent with the rulings in the Judgment, Decision and Sale Order and Injunction.

The Judgment provides procedures for amending pleadings that violate the Judgment, Decision and Sale Order and Injunction. Specifically, it provides as follows:

> New GM is hereby authorized to serve this Judgment and the Decision upon any additional party (or his or her attorney) (each, an "**Additional Party**") that commences a lawsuit and/or is not otherwise on Exhibits "A" through "D" hereto (each, an "**Additional Lawsuit**") against New GM that would be proscribed by the Sale Order (as modified by the Decision and this Judgment). Any Additional Party shall have 17 business days upon receipt of service by New GM of the Decision and Judgment to dismiss, without prejudice, such Additional Lawsuit or the allegations, claims or causes of action contained in such Additional Lawsuit that would violate the Decision, this Judgment, or the Sale Order (as modified by the Decision and this Judgment).

Judgment ¶ 18(a). Accordingly, pursuant to the terms of the Judgment, you have 17 business days from receipt of the Decision and Judgment to amend the Pleading by striking the provisions that do not comply with the Judgment, Decision and Sale Order and Injunction.

To the extent you have a

> good faith basis to maintain that the Additional Lawsuit or certain allegations, claims or causes of action contained in such Additional Lawsuit should not be dismissed without prejudice, [you] shall, within 17 business days upon receipt of the Decision and Judgment, file with [the Bankruptcy Court] a No Dismissal Pleading explaining why such Additional Lawsuit or certain claims or causes of action contained therein should not be dismissed without prejudice. ***The No Dismissal Pleading shall not reargue issues that were already decided by the Decision and Judgment***. New GM shall file a response to the No Dismissal Pleading within 17 business days of service of the No Dismissal Pleading. The [Bankruptcy] Court will schedule a hearing thereon if it believes one is necessary.

Id. ¶ 18(b) (emphasis added).

If you fail to either timely strike the offending provisions in the Pleading or timely file a No Dismissal Pleading, New GM is permitted to file with the Bankruptcy Court a "notice of presentment on five (5) business days' notice, with an attached Dismissal Order that directs [you] to dismiss without prejudice the [offending provisions in the Pleading] . . ., within 17 business days of receipt of the Dismissal Order." *Id.* ¶ 18(c).

This letter and its attachments constitute service on you of the Judgment and Decision, which triggers the provisions in paragraph 18 of the Judgment with respect to the Lawsuit.

New GM reserves all of its rights regarding any continuing violations of the Bankruptcy Court's rulings.

It is likely that based on a Case Management Conference held by Bankruptcy Judge Gerber on August 31, 2015, the briefing schedule for the No Strike/No Dismissal Pleading (in particular, your 17 business day time to respond to this letter) will be modified. We will send you the Case Management Order once it is entered which will reset the schedule. If you have any questions in the interim, please call me.

Very truly yours,

/s/ Scott I. Davidson

Scott I. Davidson

SD/hs
Encl.

cc: Mary Quinn Cooper, Esq.

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August 26, 2015

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Email: robert@fergusonlaw.com

Re: ***Tibbetts v. General Motors LLC, et al.***
Case No.: D-202-CV-2015-04918 (Dist. Ct., Bernalillo Cty., NM)

Dear Counsel:

Reference is made to the *Plaintiff's Complaint To Recover Damages For Personal Injury And Other Damages Pursuant To New Mexico Statutory And Common Law* ("**Pleading**"), filed in the above-referenced lawsuit ("**Lawsuit**"), which seeks to hold General Motors LLC ("**New GM**") liable for various claims, as well as seeks punitive damages relating to vehicles/parts manufactured and sold by Motors Liquidation Company (f/k/a General Motors Corporation) ("**Old GM**"). From a review of the Pleading, it appears that Plaintiff is making allegations and seeking punitive damages from New GM that arise from the conduct of Old GM (and not New GM). The attempt to seek such punitive damages from New GM is a violation of the Sale Order and Injunction (as herein defined) entered by the Bankruptcy Court (as herein defined). *See Decision on Motion to Enforce Sale Order*, *In re Motors Liquidation Company*, 529 B.R. 510 (Bankr. S.D.N.Y 2015) ("**Decision**"), as well as the Judgment entered by the Bankruptcy Court on June 1, 2015 ("**Judgment**").[1] As such, the request for punitive damages cannot be maintained against New GM.

The Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended) ("**Sale Agreement**"), which was approved by an Order, dated July 5, 2009 ("**Sale Order and Injunction**"), of the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), is clear in this regard. Specifically, under the Sale Agreement, New GM assumed only three categories of liabilities for vehicles and parts sold by Old GM: (a) post-sale

---

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accidents or incidents[2] involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"—a specific written warranty, of limited duration, that only covers repairs and replacement of parts and not monetary damages; and (c) Lemon Law claims (as defined in the Sale Agreement) essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles and parts sold by Old GM were "Retained Liabilities" of Old GM. *See* Sale Agreement § 2.3(b). To the extent the request for punitive damages contained in the Pleading is based on a successor liability theory, such liabilities were not assumed by New GM and, accordingly, New GM cannot be liable to the Plaintiff under that theory of recovery.

In addition, the Sale Agreement made clear that while New GM assumed liabilities for post-sale accidents involving Old GM vehicles directly causing personal injury, loss of life, or property damage, that obligation was for the assumption of compensatory damages only – not punitive damages. The Sale Agreement defines "damages" as all Losses other than punitive damages. Moreover, the word "directly" in the definition of Product Liabilities was specifically used to make clear that the only liabilities assumed by New GM for post-sale accidents are those damages directly related to the accident. Punitive damages which are assessed to deter future wrongful conduct of Old GM, unrelated to the specific accident, was never something that New GM assumed. The Bankruptcy Court has previously found that New GM only assumed the liabilities that were commercially necessary for its post-sale business activities. Punitive damages assessed to punish alleged pre-sale wrongful conduct of Old GM would never be something considered "commercially necessary." In fact, based on the subordinated priority of punitive damage claims in bankruptcy, even Old GM would not have been required to pay such damages. And, clearly, New GM did not assume an obligation that Old GM would never have been required to pay.

Various provisions of the Sale Agreement and the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities, as defined in the Sale Agreement) predicated on Old GM conduct, relating to the operation of Old GM's business, or the production of vehicles and parts before July 10, 2009. *See, e.g.*, Sale Order and Injunction ¶¶ AA, 8, 46. The Sale Order and Injunction enjoins parties from bringing actions against New GM for unassumed Old GM liabilities. *Id.*, ¶ 8. It also provides that the Bankruptcy Court retains "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [New GM] against any of the [liabilities that it did not expressly assume under the Sale Agreement]." *Id.*, ¶ 71. If there is any ambiguity with respect to any of the foregoing -- which there should not be -- the exclusive forum to clarify that ambiguity is the Bankruptcy Court. The Bankruptcy Court has consistently exercised jurisdiction over issues such as those raised in the Lawsuit.[3]

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[2] According to the Pleading, Plaintiff is asserting, among others, product liability claims resulting from an accident that took place after the closing of the sale from Old GM to New GM. New GM assumed "Product Liabilities" (as defined in the Sale Agreement, as amended) for post-363 Sale accidents. As such, to the extent the Pleading asserts assumed Product Liabilities, those aspects of the Pleading would not be barred by the Sale Order and Injunction, the Sale Agreement or the Judgment. Note, however, that New GM disputes any and all liability for such claims.

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> good faith basis to maintain that the Additional Lawsuit or certain allegations, claims or causes of action contained in such Additional Lawsuit should not be dismissed without prejudice, [you] shall, within 17 business days upon receipt of the Decision and Judgment, file with [the Bankruptcy Court] a No Dismissal Pleading explaining why such Additional Lawsuit or certain claims or causes of action contained therein should not be dismissed without prejudice. ***The No Dismissal Pleading shall not reargue issues that were already decided by the Decision and Judgment***. New GM shall file a response to the No Dismissal Pleading within 17 business days of service of the No Dismissal Pleading. The [Bankruptcy] Court will schedule a hearing thereon if it believes one is necessary.

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If you have any questions, please call me.

Very truly yours,

/s/ Scott I. Davidson

Scott I. Davidson

SD/hs
Encl.

cc: Kent B. Hanson
Christina Muscarella Gooch

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August 31, 2015

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Re: ***Lemus v. General Motors LLC, et al.***
Case No.: D-101-CV-2013-03270 (1st Jud. Dist., Santa Fe Cty., NM)

Dear Counsel:

Reference is made to the *Complaint for Damages* ("**Pleading**"), filed in the above-referenced lawsuit ("**Lawsuit**"), which seeks to hold General Motors LLC ("**New GM**") liable for various claims, as well as seeks punitive damages relating to vehicles/parts manufactured and sold by Motors Liquidation Company (f/k/a General Motors Corporation) ("**Old GM**"). From a review of the Pleading, it appears that Plaintiff is making allegations and seeking punitive damages against New GM that arise from the conduct of Old GM (and not New GM). The attempt to seek such punitive damages from New GM is a violation of the Sale Order and Injunction (as herein defined) entered by the Bankruptcy Court (as herein defined). *See Decision on Motion to Enforce Sale Order*, *In re Motors Liquidation Company*, 529 B.R. 510 (Bankr. S.D.N.Y 2015) ("**Decision**"), as well as the Judgment entered by the Bankruptcy Court on June 1, 2015 ("**Judgment**").[1] As such, the request for punitive damages cannot be maintained against New GM.

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The Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended) ("**Sale Agreement**"), which was approved by an Order, dated July 5, 2009 ("**Sale Order and Injunction**"), of the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), is clear in this regard. Specifically, under the Sale Agreement, New GM assumed only three categories of liabilities for vehicles and parts sold by Old GM: (a) post-sale accidents or incidents[2] involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"—a specific written warranty, of limited duration, that only covers repairs and replacement of parts and not monetary damages; and (c) Lemon Law claims (as defined in the Sale Agreement) essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles and parts sold by Old GM were "Retained Liabilities" of Old GM. *See* Sale Agreement § 2.3(b). To the extent the request for punitive damages contained in the Pleading is based on a successor liability theory, such liabilities were not assumed by New GM and, accordingly, New GM cannot be liable to the Plaintiff under that theory of recovery.

In addition, the Sale Agreement made clear that while New GM assumed liabilities for post-sale accidents involving Old GM vehicles directly causing personal injury, loss of life, or property damage, that obligation was for the assumption of compensatory damages only – not punitive damages. The Sale Agreement defines "damages" as all Losses other than punitive damages. Moreover, the word "directly" in the definition of Product Liabilities was specifically used to make clear that the only liabilities assumed by New GM for post-sale accidents are those damages directly related to the accident. Punitive damages which are assessed to deter future wrongful conduct of Old GM, unrelated to the specific accident, was never something that New GM assumed. The Bankruptcy Court has previously found that New GM only assumed the liabilities that were commercially necessary for its post-sale business activities. Punitive damages assessed to punish alleged pre-sale wrongful conduct of Old GM would never be something considered "commercially necessary." In fact, based on the subordinated priority of punitive damage claims in bankruptcy, even Old GM would not have been required to pay such damages. And, clearly, New GM did not assume an obligation that Old GM would never have been required to pay.

Various provisions of the Sale Agreement and the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities, as defined in the Sale Agreement) predicated on Old GM conduct, relating to the operation of Old GM's business, or the production of vehicles and parts before July 10, 2009. *See, e.g.*, Sale Order and Injunction ¶¶ AA, 8, 46. The Sale Order and Injunction enjoins parties from bringing actions against New GM for unassumed Old GM liabilities. *Id.*, ¶ 8. It also provides that the Bankruptcy Court retains "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [New GM] against any of the [liabilities that it did not expressly assume under the Sale Agreement]." *Id.*, ¶ 71. If there is any ambiguity with respect to any of the foregoing -- which there should not be -- the exclusive forum to clarify that ambiguity is the

[2] According to the Pleading, Plaintiff is asserting, among others, product liability claims resulting from an accident that took place after the closing of the sale from Old GM to New GM. New GM assumed "Product Liabilities" (as defined in the Sale Agreement, as amended) for post-363 Sale accidents. As such, to the extent the Pleading asserts assumed Product Liabilities, those aspects of the Pleading would not be barred by the Sale Order and Injunction, the Sale Agreement or the Judgment. Note, however, that New GM disputes any and all liability for such claims.

Bankruptcy Court. The Bankruptcy Court has consistently exercised jurisdiction over issues such as those raised in the Lawsuit.[3]

The Bankruptcy Court recently issued the Judgment, which reiterated that "[e]xcept for Independent Claims and Assumed Liabilities (if any), all claims and/or causes of action that the Ignition Switch Plaintiffs may have against New GM concerning an Old GM vehicle or part seeking to impose liability or damages based in whole or in part on Old GM conduct (including, without limitation, on any successor liability theory of recovery) are barred and enjoined pursuant to the Sale Order . . . ." Judgment ¶ 9; *see also* Decision, 529 B.R. at 528 ("Claims premised in any way on Old GM conduct are properly proscribed under the Sale Agreement and the Sale Order, and by reason of the Court's other rulings, the prohibitions against the assertion of such claims stand."). The reasoning and rulings set forth in the Judgment and Decision are equally applicable to the Lawsuit. To the extent that the Pleading requests punitive damages based on Old GM conduct, such a request is proscribed. Accordingly, the Pleading should be amended so that it is consistent with the rulings in the Judgment, Decision and Sale Order and Injunction.

The Judgment provides procedures for amending pleadings that violate the Judgment, Decision and Sale Order and Injunction. Specifically, it provides as follows:

> New GM is hereby authorized to serve this Judgment and the Decision upon any additional party (or his or her attorney) (each, an "**Additional Party**") that commences a lawsuit and/or is not otherwise on Exhibits "A" through "D" hereto (each, an "**Additional Lawsuit**") against New GM that would be proscribed by the Sale Order (as modified by the Decision and this Judgment). Any Additional Party shall have 17 business days upon receipt of service by New GM of the Decision and Judgment to dismiss, without prejudice, such Additional Lawsuit or the allegations, claims or causes of action contained in such Additional Lawsuit that would violate the Decision, this Judgment, or the Sale Order (as modified by the Decision and this Judgment).

Judgment ¶ 18(a). Accordingly, pursuant to the terms of the Judgment, you have 17 business days from receipt of the Decision and Judgment to amend the Pleading by striking the provisions that do not comply with the Judgment, Decision and Sale Order and Injunction.

To the extent you have a

> good faith basis to maintain that the Additional Lawsuit or certain allegations, claims or causes of action contained in such Additional Lawsuit should not be dismissed without prejudice, [you] shall, within 17 business days upon receipt of the Decision and Judgment, file with [the Bankruptcy Court] a No Dismissal Pleading explaining why such Additional Lawsuit or certain claims or causes of action contained therein should not be dismissed without prejudice. ***The No Dismissal Pleading shall not reargue issues that were already decided by the***

---

[3] *See, e.g.*, *Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-09803, 2013 WL 620281 (Bankr. S.D.N.Y. Feb. 19, 2013); *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–00509, 2012 WL 1339496 (Bankr. S.D.N.Y. Apr. 17, 2012), *aff'd,* 500 B.R. 333 (S.D.N.Y. 2013), *aff'd*, No. 13-4223-BK, 2014 WL 4653066 (2d Cir. Sept. 19, 2014). *See also Celotex Corp. v. Edward*, 514 U.S. 300 (1995).

> ***Decision and Judgment***. New GM shall file a response to the No Dismissal Pleading within 17 business days of service of the No Dismissal Pleading. The [Bankruptcy] Court will schedule a hearing thereon if it believes one is necessary.

Id. ¶ 18(b) (emphasis added).

If you fail to either timely strike the offending provisions in the Pleading or timely file a No Dismissal Pleading, New GM is permitted to file with the Bankruptcy Court a "notice of presentment on five (5) business days' notice, with an attached Dismissal Order that directs [you] to dismiss without prejudice the [offending provisions in the Pleading] . . ., within 17 business days of receipt of the Dismissal Order." *Id.* ¶ 18(c).

This letter and its attachments constitute service on you of the Judgment and Decision, which triggers the provisions in paragraph 18 of the Judgment with respect to the Lawsuit.

New GM reserves all of its rights regarding any continuing violations of the Bankruptcy Court's rulings.

It is likely that based on a Case Management Conference held by Bankruptcy Judge Gerber on August 31, 2015, the briefing schedule for the No Strike/No Dismissal Pleading (in particular, your 17 business day time to respond to this letter) will be modified. We will send you the Case Management Order once it is entered which will reset the schedule. If you have any questions in the interim, please call me.

Very truly yours,

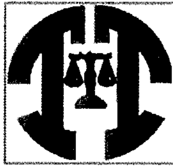
/s/ Scott I. Davidson

Scott I. Davidson

SD/hs
Encl.

Cc: Tom Klein
C. Megan Fischer

Exhibit Q



TURNER & ASSOCIATES, P.A.
Attorneys at Law

4705 Somers Avenue, Suite 100
North Little Rock, AR 72116
501-791-2277

Tab Turner
tab@tturner.com

September 2, 2015

Scott Davidson
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Re: *Lemus v. GM*
Tibbetts v. GM, et al
Chapman v. GM
Trujillo v. GM
Smith v. GM
Durity v. GM

Dear Mr. Davidson:

I represent Plaintiffs in the above-listed cases. The purpose of this letter is to respond to various letters received from you and your colleagues pertaining to certain claims against "New GM". Specifically, the letters, which appear to be form letters, include the statement that "(F)rom a review of the Pleading, it appears that Plaintiff is making allegations and seeking punitive damages against New GM that arise from the conduct of Old GM (and not New GM)." The letters then state that my clients have 17 business days to amend the Pleading by striking any provisions that do not comply with the Judgment, Decision and Sale Order and Injunction.

First, on behalf of my clients, I have previously requested that you and your colleagues explain the basis for the statement that the Pleading "appears" to make "allegations and (be) seeking punitive damages against New GM that arise from conduct of Old GM (and not New GM)". To date, GM has not neither responded nor provided any explanation of what particular references in the Pleading GM claims need to be amended. I would still appreciate those references well-within the 17 days provided.

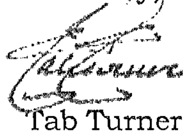
Second, allow this to confirm that my clients are <u>not</u> alleging that New GM is liable for punitive damages for any alleged conduct of old GM. To the extent any such confusion exists, the intent of the complaint, and the language used, focuses on conduct of old GM that new GM became aware of after the Sale Order. New GM then acted in a manner that should subject it to punitive

damages by failing to warn and/or fraudulently concealing the defect from my clients.

As I am certain you are well-aware, 49 US 30120 (g) imposes a notification, recall and remedy obligation for ten (10) calendar years, which is in effect a statutory continuing duty to warn of known defects and dangerous conditions. There can be little dispute that New GM is bound by the referenced obligations, which include recalling defective vehicles and placing consumers on sufficient notice of these issues.

Should you have additional questions, feel free to call.

Sincerely,



Tab Turner

CTT/lg

Exhibit R

Asher, Jennifer

From:	Davidson, Scott
Sent:	Friday, September 11, 2015 10:52 AM
To:	'Tab Turner'
Cc:	Steinberg, Arthur; 'rgodfrey@kirkland.com'; Bloomer, Andrew B. (abloomer@kirkland.com)
Subject:	General Motors LLC - Correspondence Regarding Lemus, Tibbets, Chapman, Trujillo, Smith Lawsuits
Attachments:	GM - Scheduling Order Package.pdf

We received your recent correspondence with respect to the above-referenced lawsuits. The issues raised in your correspondence are, or will shortly be, before the Bankruptcy Court. The Scheduling Order entered by the Bankruptcy Court on September 3, 2015, which was previously sent to you, sets forth various procedures with respecting to briefing certain issues, and the submission of marked pleadings and responses. A copy of the Scheduling Order is also attached hereto for your convenience. Subject to following the procedures set by the Court, you can participate in this process if you choose to. In short, you have the choice to brief issues that affect your client, or to wait for the Bankruptcy Court to decide issues based on briefs submitted by Designated Counsel and perhaps others.

Thank you

Scott I. Davidson | King & Spalding LLP

Tel: 212.556.2164 | Fax: 212.556.2222 | E-mail: sdavidson@kslaw.com
1185 Avenue of the Americas | New York, New York 10036

The information contained in this e-mail is personal and confidential and is intended for the recipient only. In the event that you have received this message in error, please delete it immediately and inform the sender as soon as possible.

Exhibit S

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Scott Davidson
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sdavidson@kslaw.com

May 16, 2016

Via E-Mail Transmission
Tab Turner, Esq.
TURNER & ASSOCIATES, P.A.
4705 Somers Avenue
North Little Rock, AR 72116

Re: ***Chapman v. General Motors LLC, et al.***
Case No.: D-101-CV-2013-03270

Dear Counsel:

By this letter, General Motors LLC ("**New GM**") demands that certain allegations, claims and damage requests made in the Complaint filed in the above referenced lawsuit be withdrawn due to the requirements of federal bankruptcy law, for the reasons explained below. You were previously sent a letter in September 2015 ("**2015 Letter**"), highlighting issues with the Complaint and explaining that the Complaint needed to be amended. At that time, the Bankruptcy Court had not yet issued the November Decision and December Judgment (each as defined below). Those rulings mandate the amendment of the Complaint, as explained herein.

Plaintiff is violating the Sale Order and Injunction[1] entered by the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), as well as certain recent decisions and judgments entered by the Bankruptcy Court.[2] The following allegations, claims and damage requests are legally barred:

- Allegations that New GM is the successor of Old GM (no matter how phrased) (*see* Complaint, ¶ 3);

---

[1] A copy of the Sale Order and Injunction (with the Sale Agreement attached thereto) is annexed hereto as **Exhibit "A."**

[2] *See In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y 2015) ("**April Decision**"); Judgment entered by the Bankruptcy Court on June 1, 2015 ("**June Judgment**"); *In re Motors Liquidation Co.*, 541 B.R. 104 (Bankr. S.D.N.Y. 2015) ("**November Decision**"); and Judgment entered by the Bankruptcy Court on December 4, 2015 ("**December Judgment**"). Copies of the June Judgment and December Judgment are annexed hereto as **Exhibit "B"** and **Exhibit "C,"** respectively. Copies of the two published decisions of the Bankruptcy Court can be provided upon request.

- Allegations that merely refer to "GM" and do not distinguish between Old GM and New GM (*see* Complaint, ¶¶ 4, 9, 10, 12, 15)

- Allegations that New GM designed, manufactured, tested, marketed and/or distributed the subject vehicle, a 2004 Silverado C1500 pickup truck ("**Subject Vehicle**"), or performed other conduct relating to the Subject Vehicle before the closing of the Sale from Old GM to New GM (*see* Complaint, ¶¶ 3, 4, 8-12, 14, 15);

- Claims based on (i) an alleged failure to notify Plaintiff of a defect (*see* Complaint, ¶ 14) and (ii) an alleged duty to warn, to the extent that such claim is based on the conduct of New GM (*see* Complaint, ¶ 14); and

- All requests for punitive/exemplary damages as against New GM.

Applicable Bankruptcy Court Rulings

The Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended) ("**Sale Agreement**"), which was approved by an Order, dated July 5, 2009 ("**Sale Order and Injunction**") of the Bankruptcy Court, provides that New GM assumed only three categories of liabilities for vehicles sold by Old GM: (a) post-sale accidents or incidents involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"—a specific written warranty, of limited duration, that only covers repairs and replacement of parts and not monetary damages; and (c) Lemon Law claims (as defined in the Sale Agreement) essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles sold by Old GM were "Retained Liabilities" of Old GM. *See* Sale Agreement § 2.3(b). To the extent the claims asserted in the Complaint are based on a successor liability theory or otherwise constitute Retained Liabilities, they were not assumed by New GM and, accordingly, New GM cannot be liable to Plaintiff for such claims. *See* Sale Order and Injunction, ¶¶ 7, 46; Sale Agreement, §§ 2.3(a), 2.3(b).

Paragraph 14 of the December Judgment provides as follows:

> Plaintiffs of two types—1) plaintiffs whose claims arise in connection with vehicles without the Ignition Switch Defect, and 2) Pre-Closing Accident Plaintiffs—are not entitled to assert Independent Claims against New GM with respect to vehicles manufactured and first sold by Old GM (an "Old GM Vehicle"). To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015[.]

The Plaintiff in the Lawsuit does not have a claim based on the Ignition Switch Defect and therefore is prohibited from asserting an Independent Claim[3] against New GM.

---

[3] The term "Independent Claim" was defined by the Bankruptcy Court in paragraph 4 of the June Judgment as "claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct."

The December Judgment also described the types of allegations that cannot be made in complaints asserting claims against New GM based on Old GM vehicles. Specifically, Plaintiff is prohibited from making allegations: (i) that New GM is the successor of Old GM (no matter how phrased) (*see* December Judgment, ¶ 16); (ii) that do not distinguish between Old GM and New GM (*see id.* ¶ 17); or (iii) that allege or suggest that New GM manufactured or designed an Old GM vehicle, or performed other conduct relating to an Old GM vehicle before the entry of the Sale Order and Injunction (*i.e.*, July 10, 2009) (*see id.* ¶ 18).

Moreover, the December Judgment determines that the Sale Agreement does not provide for the assumption by New GM of punitive/exemplary damages relating to Product Liabilities. Parties such as Plaintiff can only seek compensatory damages. *See* December Judgment, ¶ 6 ("New GM did not contractually assume liability for punitive damages from Old GM.").

The Barred Allegations, Claims and Requests for Damages in the Complaint

The Bankruptcy Court's rulings apply to Plaintiff's lawsuit. As set forth on pages 1 to 2 above, the Complaint contains allegations that are prohibited by the December Judgment, requiring that the Complaint be amended.

Moreover, the Sale Order and Injunction enjoins parties from bringing actions against New GM for Retained Liabilities of Old GM. *Id.*, ¶ 8. Under the December Judgment, Non-Ignition Switch Plaintiffs (like Plaintiff) are barred from asserting any claims (other than Assumed Liabilities) against New GM. *See* December Judgment, ¶ 14. The December Judgment specifically provides that New GM did not assume various claims and/or causes of action when it agreed to assume Product Liabilities. The non-assumed liabilities include claims based on an alleged obligation to identify defects in Old GM vehicles and an alleged post-363 Sale duty to warn. Proscribed causes of action contained in the Complaint are set forth on page 2 above.

In addition, because New GM did not assume punitive/exemplary damages in connection with its assumption of Product Liabilities, and Plaintiff is a Non-Ignition Switch Plaintiff, the request for punitive/exemplary damages against New GM violates the Sale Order and Injunction, and the Bankruptcy Court's rulings. All requests for punitive/exemplary damages as against New GM must be stricken from the Complaint.

Conclusion

The December Judgment stays the Lawsuit until all violations of the Sale Order and Injunction, and the Bankruptcy Court's other rulings, are sufficiently addressed. *See, e.g.*, December Judgment, ¶¶ 16, 17, 18. Please let us know by May 23, 2016 whether you will take the requested action and comply with the Bankruptcy Court's rulings.

New GM reserves all of its rights regarding any continuing violations of the Bankruptcy Court's rulings, including, but not limited to seeking all available relief if it is determined that there is a willful violation of the Sale Order and Injunction and the Bankruptcy Court's other rulings, particularly where Plaintiff previously received the 2015 Letter, which put Plaintiff on notice of applicable Bankruptcy Court rulings and the need to amend the Complaint. *See FirstBank Puerto*

Rico v. Barclays Capital Inc. (In re Lehman Brothers Holdings Inc.); Summary Order, Case No. 15-149-br. (2d Cir. March 29, 2016).

If you have any questions, please call me.

Very truly yours,

/s/ Scott I. Davidson

Scott I. Davidson

SD/hs
Encl.

cc: Mary Quinn Cooper, Esq.

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May 10, 2016

Via E-Mail And Overnight Delivery
Richard J. Velle, Esq.
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8012 Pennsylvania Circle NE
Albuquerque, New Mexico 87110

Tab Turner, Esq.
TURNER & ASSOCIATES, P.A.
4705 Somers Avenue
North Little Rock, AR 72116

Re: ***Lemus v. General Motors LLC, et al.***
Case No.: D-101-CV-2013-03270

Dear Counsel:

By this letter, General Motors LLC ("**New GM**") demands that certain allegations, claims and damage requests made in the Complaint filed in the above referenced lawsuit be withdrawn due to the requirements of federal bankruptcy law, for the reasons explained below. You were previously sent a letter in August of 2015 ("**2015 Letter**"), highlighting issues with the Complaint and explaining that the Complaint needed to be amended. At that time, the Bankruptcy Court had not yet issued the November Decision and December Judgment (each as defined below). Those rulings mandate the amendment of the Complaint, as explained herein.

Plaintiff is violating the Sale Order and Injunction[1] entered by the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), as well as certain recent decisions and judgments entered by the Bankruptcy Court.[2] The following allegations, claims and damage requests are legally barred:

[1] A copy of the Sale Order and Injunction (with the Sale Agreement attached thereto) is annexed hereto as **Exhibit "A."**

[2] *See In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y 2015) ("**April Decision**"); Judgment entered by the Bankruptcy Court on June 1, 2015 ("**June Judgment**"); *In re Motors Liquidation Co.*, 541 B.R. 104 (Bankr. S.D.N.Y. 2015) ("**November Decision**"); and Judgment entered by the Bankruptcy Court on December 4, 2015 ("**December Judgment**"). Copies of the June Judgment and December Judgment are annexed hereto as **Exhibit**

- Allegations that New GM designed, manufactured, tested, marketed and/or distributed the subject vehicle, a 2008 GMC truck ("**Subject Vehicle**"), or performed other conduct relating to the Subject Vehicle before the closing of the Sale from Old GM to New GM (*see* Complaint, ¶¶ 3, 12, 14, 16, 19, 23, 24, 25, 27);

- Claims based on a failure to recall or a failure to notify Plaintiff of a defect (*see* Complaint, ¶¶ 19(m), 19(n)); and

- All requests for punitive damages as against New GM.

Applicable Bankruptcy Court Rulings

The Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended) ("**Sale Agreement**"), which was approved by an Order, dated July 5, 2009 ("**Sale Order and Injunction**") of the Bankruptcy Court, provides that New GM assumed only three categories of liabilities for vehicles sold by Old GM: (a) post-sale accidents or incidents involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"—a specific written warranty, of limited duration, that only covers repairs and replacement of parts and not monetary damages; and (c) Lemon Law claims (as defined in the Sale Agreement) essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles sold by Old GM were "Retained Liabilities" of Old GM. *See* Sale Agreement § 2.3(b). To the extent the claims asserted in the Complaint are based on a successor liability theory or otherwise constitute Retained Liabilities, they were not assumed by New GM and, accordingly, New GM cannot be liable to Plaintiff for such claims. *See* Sale Order and Injunction, ¶¶ 7, 46; Sale Agreement, §§ 2.3(a), 2.3(b).

Paragraph 14 of the December Judgment provides as follows:

> Plaintiffs of two types—1) plaintiffs whose claims arise in connection with vehicles without the Ignition Switch Defect, and 2) Pre-Closing Accident Plaintiffs—are not entitled to assert Independent Claims against New GM with respect to vehicles manufactured and first sold by Old GM (an "Old GM Vehicle"). To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015[.]

"B" and **Exhibit "C,"** respectively. Copies of the two published decisions of the Bankruptcy Court can be provided upon request.

The Plaintiff in the Lawsuit does not have a claim based on the Ignition Switch Defect and therefore is prohibited from asserting an Independent Claim[3] against New GM.

The December Judgment also described what types of allegations cannot be made in complaints asserting claims against New GM based on Old GM vehicles. Specifically, Plaintiff is prohibited from making allegations: (i) that New GM is the successor of Old GM (no matter how phrased) (*see* December Judgment, ¶ 16); (ii) that do not distinguish between Old GM and New GM (*see id.* ¶ 17); or (iii) that allege or suggest that New GM manufactured or designed an Old GM vehicle, or performed other conduct relating to an Old GM vehicle before the entry of the Sale Order and Injunction (*i.e.*, July 10, 2009) (*see id.* ¶ 18).

Moreover, the December Judgment determines that the Sale Agreement does not provide for the assumption by New GM of punitive damages relating to Product Liabilities. Parties such as Plaintiff can only seek compensatory damages. *See* December Judgment, ¶ 6 ("New GM did not contractually assume liability for punitive damages from Old GM.").

The Barred Allegations, Claims and Requests for Damages in the Complaint

The Bankruptcy Court's rulings apply to Plaintiff's lawsuit. As set forth on page 2 above, the Complaint contains allegations that are prohibited by the December Judgment, requiring that the Complaint be amended.

Moreover, the Sale Order and Injunction enjoins parties from bringing actions against New GM for Retained Liabilities of Old GM. *Id.*, ¶ 8. Under the December Judgment, Non-Ignition Switch Plaintiffs (like Plaintiff) are barred from asserting any claims (other than Assumed Liabilities) against New GM. *See* December Judgment, ¶ 14. The December Judgment specifically provides that New GM did not assume various claims and/or causes of action when it agreed to assume Product Liabilities. The non-assumed liabilities include claims based on a duty to recall or retrofit, and obligations to identify defects in Old GM vehicles. *See* December Judgment, ¶¶ 21, 29, 31. Proscribed causes of action contained in the Complaint are set forth on page 2 above.

In addition, because New GM did not assume punitive damages in connection with its assumption of Product Liabilities, and Plaintiff is a Non-Ignition Switch Plaintiff, the request for punitive damages against New GM violates the Sale Order and Injunction, and the Bankruptcy Court's rulings. All requests for punitive damages as against New GM must be stricken from the Complaint.

Conclusion

The December Judgment stays the Lawsuit until all violations of the Sale Order and Injunction, and the Bankruptcy Court's other rulings, are sufficiently addressed. *See, e.g.*, December Judgment, ¶¶ 16, 17, 18. Please let us know by May 17, 2016 whether you will take the requested action and comply with the Bankruptcy Court's rulings.

---

[3] The term "Independent Claim" was defined by the Bankruptcy Court in paragraph 4 of the June Judgment as "claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct."

New GM reserves all of its rights regarding any continuing violations of the Bankruptcy Court's rulings, including, but not limited to seeking all available relief if it is determined that there is a willful violation of the Sale Order and Injunction and the Bankruptcy Court's other rulings, particularly where Plaintiff previously received the 2015 Letter, which put Plaintiff on notice of applicable Bankruptcy Court rulings and the need to amend the Complaint. *See FirstBank Puerto Rico v. Barclays Capital Inc. (In re Lehman Brothers Holdings Inc.)*; Summary Order, Case No. 15-149-br. (2d Cir. March 29, 2016).

If you have any questions, please call me.

Very truly yours,

/s/ Scott I. Davidson

Scott I. Davidson

SD/hs
Encl.

cc: Megan Fischer, Esq.

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May 18, 2016

Via E-Mail Transmission
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WILL FERGUSON & ASSOCIATES
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Albuquerque, New Mexico 87110

Tab Turner, Esq.
TURNER & ASSOCIATES, P.A.
4705 Somers Avenue, Suite 100
North Little Rock, Arkansas 72116

Re: ***Hayes-Tibbetts v. Armando Saenz, et al.***
Case No.: D-202-CV-2015-04918

Dear Counsel:

By this letter, General Motors LLC ("**New GM**") demands that certain allegations, claims and damage requests made in the Complaint filed in the above referenced lawsuit be withdrawn due to the requirements of federal bankruptcy law, for the reasons explained below.[1]

Plaintiff is violating the Sale Order and Injunction[2] entered by the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), as well as certain recent decisions and judgments entered by the Bankruptcy Court.[3] The following allegations, claims and damage requests are legally barred:

---

[1] You were previously sent a letter in connection with this Lawsuit in August of 2015 ("**2015 Letter**"), highlighting issues with the Complaint and explaining that the Complaint needed to be amended. At that time, the Bankruptcy Court had not yet issued the November Decision and December Judgment (each as defined below). These rulings mandate the amendment of the Complaint, as explained herein.

[2] A copy of the Sale Order and Injunction (with the Sale Agreement attached thereto) is annexed hereto as **Exhibit "A."**

[3] *See In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y 2015) ("**April Decision**"); Judgment entered by the Bankruptcy Court on June 1, 2015 ("**June Judgment**"); *In re Motors Liquidation Co.*, 541 B.R. 104 (Bankr. S.D.N.Y. 2015) ("**November Decision**"); and Judgment entered by the Bankruptcy Court on December 4, 2015 ("**December Judgment**"). Copies of the June Judgment and December Judgment are annexed hereto as **Exhibit**

- Allegations that New GM is the successor of Old GM (no matter how phrased) (*see* Complaint, ¶ 5);

- Allegations that merely refer to "GM" and do not distinguish between Old GM and New GM (*see* Complaint, ¶ 10);

- Allegations that New GM designed, manufactured, tested, marketed and/or distributed the subject vehicle, a 2005 Cadillac SRX ("**Subject Vehicle**"), or performed other conduct relating to the Subject Vehicle before the closing of the Sale from Old GM to New GM (*see* Complaint, ¶¶ 5, 10, 35, 37, 38-44, 48, 52, 55, 56);

- Claims based on a failure to identify defects and/or recall an Old GM vehicle (*see* Complaint, ¶ 44); and

- All requests for punitive/exemplary damages as against New GM.

Applicable Bankruptcy Court Rulings

The Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended) ("**Sale Agreement**"), which was approved by an Order, dated July 5, 2009 ("**Sale Order and Injunction**") of the Bankruptcy Court, provides that New GM assumed only three categories of liabilities for vehicles sold by Old GM: (a) post-sale accidents or incidents involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"—a specific written warranty, of limited duration, that only covers repairs and replacement of parts and not monetary damages; and (c) Lemon Law claims (as defined in the Sale Agreement) essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles sold by Old GM were "Retained Liabilities" of Old GM. *See* Sale Agreement § 2.3(b). To the extent the claims asserted in the Complaint are based on a successor liability theory or otherwise constitute Retained Liabilities, they were not assumed by New GM and, accordingly, New GM cannot be liable to Plaintiff for such claims. *See* Sale Order and Injunction, ¶¶ 7, 46; Sale Agreement, §§ 2.3(a), 2.3(b).

Paragraph 14 of the December Judgment provides as follows:

> Plaintiffs of two types—1) plaintiffs whose claims arise in connection with vehicles without the Ignition Switch Defect, and 2) Pre-Closing Accident Plaintiffs—are not entitled to assert Independent Claims against New GM with respect to vehicles manufactured and first sold by Old GM (an "Old GM Vehicle"). To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015[.]

"B" and **Exhibit "C,"** respectively. Copies of the two published decisions of the Bankruptcy Court can be provided upon request.

The Plaintiff in the Lawsuit does not have a claim based on the Ignition Switch Defect and therefore is prohibited from asserting an Independent Claim[4] against New GM.

The December Judgment also described the types of allegations that cannot be made in complaints asserting claims against New GM based on Old GM vehicles. Specifically, Plaintiff is prohibited from making allegations: (i) that New GM is the successor of Old GM (no matter how phrased) (*see* December Judgment, ¶ 16); (ii) that do not distinguish between Old GM and New GM (*see id.* ¶ 17); or (iii) that allege or suggest that New GM manufactured or designed an Old GM vehicle, or performed other conduct relating to an Old GM vehicle before the entry of the Sale Order and Injunction (*i.e.*, July 10, 2009) (*see id.* ¶ 18).

Moreover, the December Judgment determines that the Sale Agreement does not provide for the assumption by New GM of punitive/exemplary damages relating to Product Liabilities. Parties such as Plaintiff can only seek compensatory damages. *See* December Judgment, ¶ 6 ("New GM did not contractually assume liability for punitive damages from Old GM.").

<u>The Barred Allegations, Claims and Requests for Damages in the Complaint</u>

The Bankruptcy Court's rulings apply to Plaintiff's lawsuit. As set forth on page 2 above, the Complaint contains allegations that are prohibited by the December Judgment, requiring that the Complaint be amended.

Moreover, the Sale Order and Injunction enjoins parties from bringing actions against New GM for Retained Liabilities of Old GM. *Id.*, ¶ 8. Under the December Judgment, Non-Ignition Switch Plaintiffs (like Plaintiff) are barred from asserting any claims (other than Assumed Liabilities) against New GM. *See* December Judgment, ¶ 14. The December Judgment specifically provides that New GM did not assume various claims and/or causes of action when it agreed to assume Product Liabilities. The non-assumed liabilities include claims based on a failure to identify or remedy a defect, and/or recall the Subject Vehicle. *See* December Judgment, ¶¶ 29, 31. Proscribed causes of action contained in the Complaint are set forth on page 2 above.

In addition, because New GM did not assume punitive/exemplary damages in connection with its assumption of Product Liabilities, and Plaintiff is a Non-Ignition Switch Plaintiff, the request for punitive/exemplary damages against New GM violates the Sale Order and Injunction, and the Bankruptcy Court's rulings. All requests for punitive/exemplary damages as against New GM must be stricken from the Complaint.

<u>Conclusion</u>

The December Judgment stays the Lawsuit until all violations of the Sale Order and Injunction, and the Bankruptcy Court's other rulings, are sufficiently addressed. *See, e.g.*, December Judgment, ¶¶ 16, 17, 18. Please let us know by May 25, 2016 whether you will take the requested action and comply with the Bankruptcy Court's rulings.

---

[4] The term "Independent Claim" was defined by the Bankruptcy Court in paragraph 4 of the June Judgment as "claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct."

New GM reserves all of its rights regarding any continuing violations of the Bankruptcy Court's rulings, including, but not limited to seeking all available relief if it is determined that there is a willful violation of the Sale Order and Injunction and the Bankruptcy Court's other rulings, particularly where Plaintiff previously received the 2015 Letter, which put Plaintiff on notice of applicable Bankruptcy Court rulings and the need to amend the Complaint. *See FirstBank Puerto Rico v. Barclays Capital Inc. (In re Lehman Brothers Holdings Inc.)*; Summary Order, Case No. 15-149-br. (2d Cir. March 29, 2016).

If you have any questions, please call me.

Very truly yours,

/s/ Scott I. Davidson

Scott I. Davidson

SD/hs
Encl.

cc: Kent Hanson, Esq.

TURNER & ASSOCIATES, P.A.
Attorneys at Law

4705 Somers Avenue, Suite 100
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501-791-2277

Tab Turner
tab@tturner.com

May 24, 2016

Scott Davidson
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Re: *Lemus v. GM*
Chapman v. GM
Tibbetts v. GM

Dear Mr. Davidson:

The purpose of this letter is to respond to GM's letters "demanding" that certain allegations, claims and damage requests in the Complaints be withdrawn due to requirements of federal bankruptcy law. I am aware that these are "form letters" sent to virtually every victim named in a lawsuit in the country thus explaining the vagueness of the letters.

In summary, the letters are confusing, vague, ambiguous, and fail to spell out with any level of specificity what GM contends is at issue. My clients have no problem cooperating to ensure the correct issues are litigated pursuant to applicable law, but we believe the Complaints are in full compliance with applicable law. Nevertheless, if you will point out specific portions you believe are not in compliance, we will work with you to amend.

Having the benefit of reading the applicable rulings, the following seem quite clear:

1. **SUCCESSOR LIABILITY**:

    - The Court has very clearly rules that allegations that speak of New GM being liable for misconduct as the "successor" of Old GM (e.g. allegations that refer to New GM as the "successor of," a "mere continuation of," or a "de facto successor of" of Old GM) are proscribed by the Sale Order, April Decision and June Judgment, and that complaints that contain such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

- I find no reference in the Complaints to any claim that New GM's liability is based on "successor" liability. Where do you find such an allegation?

2. ALLEGATIONS THAT MERELY REFER TO "GM":

- The Court has very clearly stated that allegations designed to mix New GM with Old GM are inappropriate. Examples include referring to "GM-branded vehicles", or that assert that New GM "was not born innocent", or any substantially similar phrase or language, are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

- Notwithstanding the foregoing, references to "GM-branded vehicles" may be used when the context is clear that the reference can only refer to New GM, and does not blend the periods during which vehicles were manufactured by Old GM and New GM; and complaints may say, without using code words as euphemisms for imposing successor liability, or muddying the distinctions between Old GM and New GM, that New GM purchased the assets of Old GM; that New GM assumed Product Liabilities from Old GM; and that New GM acquired specified knowledge from Old GM.

- In searching the Complaints, I find no such language in the subject complaints. If you feel there are, where are they?

3. ALLEGATIONS THAT NEW GM DESIGNED, MANUFACTURED OR DISTRIBUTED:

- The Court has ruled that allegations that allege or suggest that New GM manufactured or designed an Old GM Vehicle, or performed other conduct relating to an Old GM Vehicle before the Sale Order, are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

- I find no instance in the subject Complaints wherein my client alleges that New GM did anything prior to the sale order that results in liability.

4. CLAIMS FOR FAILURE TO IDENTIFY DEFECTS AND/OR RECALL:

- The Court has very clearly ruled that a duty to recall or retrofit is not an Assumed Liability, and New GM is not responsible for any failures of Old GM to do so. However, the Court has also very

clearly ruled that whether an Independent Claim can be asserted that New GM had a duty to recall or retrofit an Old GM Vehicle is a question of non-bankruptcy law that can be determined by a court other than this Court. Whether New GM had a duty, enforceable in damages to vehicle owners, to notify people who had previously purchased Old GM Vehicles of the is an issue to be determined by a court other than the Bankruptcy Court.

- The Court did not, however, decide whether there is the requisite duty for New GM under non-bankruptcy law for Old GM Vehicles, but allowed the claim to be asserted by Plaintiffs and the Post-Closing Accident Plaintiffs, leaving determination of whether there is the requisite duty under non-bankruptcy law to the non-bankruptcy court hearing that action. Similarly, obligations, if any, that New GM had an independent duty to identify or respond to defects in previously sold Old GM Vehicles that New GM did not manufacture is a question of non-bankruptcy law that may be decided by the non-bankruptcy court hearing that action. The Court specifically chose not to decide whether there is the requisite duty for New GM under non-bankruptcy law for such Old GM Vehicles, and allows such a claim to be asserted by t Plaintiffs and the Post-Closing Accident Plaintiffs, leaving determination of whether there is the requisite duty under non-bankruptcy law to the court hearing that action.

5. **PUNITIVE DAMAGES**:

- The Court ruled quite clearly that New GM did not contractually assume liability for punitive damages from Old GM. Nor is New GM liable for punitive damages based on Old GM conduct under any other theories, such as by operation of law. Therefore, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM.

- Notwithstanding the foregoing, a claim for punitive damages with respect to a post-Sale accident involving vehicles manufactured by Old GM may be asserted against New GM to the extent—but only to the extent—it relates to an otherwise viable Independent Claim and is based solely on New GM conduct or knowledge, including (a) knowledge that can be imputed to New GM under the principles set forth in the Decision and Judgment (and under non bankruptcy law), and (b) information obtained by New GM after the 363 Sale. The extent to which any such claim is "viable" shall be determined under non-bankruptcy law by the non-bankruptcy court presiding over that action.

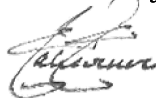
- Similarly, the Court expressed no view as to whether any punitive claim was viable. In fact, claims for punitive damages are permitted to be asserted in actions based on post-Sale accidents

involving vehicles manufactured by Old GM to the extent the claim is premised on New GM action or inaction after it was on notice of information "inherited" by New GM, or information developed by New GM post-Sale. In fact, claims for punitive damages involving New GM manufactured vehicles were never foreclosed under the Sale Order, and remain permissible. The underlying allegations and evidence used to support such claims for punitive damages are subject only to the limitations, if any, provided by non-bankruptcy law. As for claims for punitive damages relating to post-Sale Non-Product Liabilities actions involving personal injuries suffered in vehicles manufactured by Old GM, claims may be asserted to the extent, but only the extent, they are premised on New GM knowledge and conduct, including "inherited" knowledge and knowledge acquired after the Sale. As for claims for punitive damages relating to post-Sale Non-Product Liabilities actions involving personal injuries suffered in vehicles manufactured by New GM are not subject to the Sale Order and may proceed. The underlying allegations and evidence used to support for punitive damages are subject only to the limitations, if any, provided by non-bankruptcy law.

In summary, if you think there are instances of non-compliance, please point them out specifically and I will be glad to address each point with you, including amending the Complaints if and where necessary. However, I believe you will find that both Complaints are in full compliance.

Thank you for your consideration and let me know if I may be of further assistance.

Sincerely,



Tab Turner

CTT/lg

cc. Mary Quinn-Cooper
Megan Fischer
Rich Valle
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May 26, 2016

VIA E-MAIL TRANSMISSION
Tab Turner, Esq.
TURNER & ASSOCIATES, P.A.
4705 Somers Avenue, Suite 100
North Little Rock, AR 72116

Re: ***Lemus v. General Motors LLC, et al.***
Chapman v. General Motors LLC, et al.
Hayes-Tibbetts v. Armando Saenz, et al.

Dear Mr. Turner:

This letter is in response to your letter, dated May 24, 2016 ("**May 24 Letter**"). Contrary to your view expressed in the May 24 Letter, and as set forth in my previous letters sent to you in connection with the above-referenced Lawsuits, each of the plaintiffs' complaints contains allegations, claims and damage requests that violate explicit rulings made by the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"). While each of my letters pointed you to specific paragraphs of each of the complaints that are inappropriate based on the Bankruptcy Court's rulings, set forth below are specific responses to the points raised in your May 24 Letter.[1]

A. Successor Liability

Paragraph 16 of the Judgment entered by the Bankruptcy Court on December 4, 2015 ("**December Judgment**") provides:

> Allegations that speak of New GM as the successor of Old GM (e.g. allegations that refer to New GM as the "successor of," a "mere continuation of," or a "de facto successor of" of Old GM) are proscribed by the Sale Order, April Decision and June Judgment, and complaints that contain such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

[1] While each letter sent to you was similar because each complaint contains similar issues, they were not "form letters" as each contained specific citations to paragraphs in each individual complaint with an explanation why such paragraphs are prohibited by the Bankruptcy Court's rulings.

In the *Chapman* letter, I specifically pointed you to paragraph 3 of the Complaint, which states, in part:

> Defendant, General Motors, LLC ('GM-LLC') is a Delaware Limited Liability Company ***and the successor to GM***." . . . Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company 'MLC') ***and now known as*** GM-LLC . . . . [Emphasis added]

In the *Tibbetts* letter, I specifically pointed you to paragraph 5 of the Complaint, which contains the exact same language as in the *Chapman* Complaint. Paragraph 3 in the *Lemus* Complaint similarly asserts that "[p]rior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company 'MLC') ***and now known as*** GM-LLC . . . ." (emphasis added).

The above allegations clearly "speak of New GM as the successor of Old GM" and are prohibited by the December Judgment.

B. Allegations that Merely Refer to "GM"

Paragraph 17 of the December Judgment provides:

> Allegations that do not distinguish between Old GM and New GM (*e.g.*, referring to "GM" or "General Motors"), or between Old GM vehicles and New GM vehicles (*e.g.*, referring to "GM-branded vehicles"), or that assert that New GM "was not born innocent" (or any substantially similar phrase or language) are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

As stated in my letters, the complaints contain allegations that simply refer to "GM." *See Lemus* Complaint, ¶ 3; *Chapman* Complaint, ¶¶ 3, 4, 9, 10, 12, 15; *Tibbetts* Complaint, ¶¶ 5, 10. The term "GM" is not defined in the complaints. The complaints should be made clear which entity the term "GM" is referring to. In addition, if the term is meant to refer to General Motors Corporation, instead of merely using the term "GM," the term "Old GM" should be used to avoid any possible confusion.

C. Allegations that New GM Performed Actions that Were Clearly Performed by Old GM

Paragraph 18 of the December Judgment provides:

> Allegations that allege or suggest that New GM manufactured or designed an Old GM Vehicle, or performed other conduct relating to an Old GM Vehicle before the Sale Order, are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

In each of my prior letters, I pointed you to specific paragraphs of each of the complaints that contain allegations that violate paragraph 18 of the December Judgment. I suggest you re-read

my letters and review each of the identified paragraphs. An example of allegations from each of the complaints that violate this ruling by the Bankruptcy Court are as follows:

i. *Lemus* Complaint, ¶ 12: "The defective vehicle which forms the basis for this suit is a 2008 GMC truck designed, tested, manufactured, assembled, and/or distributed by GM-LLC. New GM was not in existence at the time the subject vehicle was "designed, tested, manufactured, assembled, and/or distributed . . . ."

ii. *Chapman* Complaint, ¶ 14: This paragraph references the "defendants" and asserts, numerous times they (which includes New GM) "negligently designed the vehicle . . . ." Again, New GM was not in existence at the time the subject vehicle was "designed".

iii. *Tibbetts* Complaint, ¶ 10: "The defective 2005 Cadillac SRX . . . which forms the basis for this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by Defendant GM-LLC." Once again, New GM was not in existence at the time the subject vehicle was "designed, tested, manufactured, marketed, assembled, and/or distributed . . . ."

Accordingly, based on the foregoing, pursuant to paragraphs 16, 17 and 18 of the December Judgment, each of the Lawsuits are stayed until the prohibited allegations are sufficiently addressed.

D. Plaintiff is a Non-Ignition Switch Plaintiff and Cannot Assert an Independent Claim Against New GM or Seek Punitive Damages

In your May 24 Letter, you acknowledge that the Bankruptcy Court found that certain claims are not Assumed Liabilities, and that plaintiffs may not seek punitive damages against New GM based on Assumed Liabilities. The apparent confusion in your letter rests on your belief that the plaintiffs in the three Lawsuits are Ignition Switch Plaintiffs; they are not.

The Judgment entered by the Bankruptcy Court on June 1, 2015 ("**June Judgment**") defines the term Ignition Switch Plaintiffs as those plaintiffs who assert claims against New GM based on the first three ignition switch recalls issued in February/March 2014. *See* June Judgment, at 1 n.1. The *Lemus* Lawsuit concerns a 2008 GMC truck, which is not subject to the applicable recalls, and does not concern a purportedly defective ignition switch. The *Chapman* Lawsuit concerns a 2004 Silverado C1500 pickup, which again is not subject to the applicable recalls, and does not concern a purportedly defective ignition switch. And, the *Tibbetts* Lawsuit concerns a 2005 Cadillac SRX, once again not a vehicle subject to the applicable recalls, and does not concern a purportedly defective ignition switch. Accordingly, none of the plaintiffs are Ignition Switch Plaintiffs.

Only Ignition Switch Plaintiffs can assert an "Independent Claim" against New GM. The Bankruptcy Court defined the term "Independent Claims" as "claims or causes of action ***asserted by Ignition Switch Plaintiffs*** against New GM (whether or not involving Old GM Vehicles) that are based solely on New GM's own, independent, post-Closing acts or conduct." June Judgment, ¶ 4 (emphasis added). The December Judgment also makes clear that Non-Ignition Switch Plaintiffs—like the plaintiffs in these Lawsuits—cannot assert Independent Claims against New GM:

> Plaintiffs of two types—1) ***plaintiffs whose claims arise in connection with vehicles without the Ignition Switch Defect***, and 2) Pre-Closing Accident Plaintiffs—are not entitled to assert Independent Claims against New GM with respect to vehicles manufactured and first sold by Old GM (an "**Old GM Vehicle**"). ***To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015***[.]

December Judgment, ¶ 14.

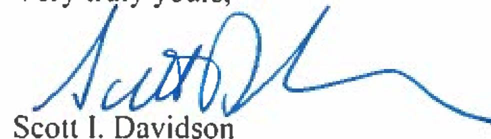
In sharp contrast to plaintiffs, as a result of the December Judgment, the Lead Counsel (who litigated the issues resolved by the December Judgment in the Bankruptcy Court) amended their complaint in MDL-2543 pending before District Judge Furman to remove all Independent Claims relating to Non-Ignition Switch Plaintiffs that owned Old GM vehicles as of the 363 Sale. Clearly, Lead Counsel understood the impact of the December Judgment and, unlike the plaintiffs herein, recognized the obligation to comply with the controlling Bankruptcy Court rulings.

Accordingly, since none of the vehicles at issue in the Lawsuits were the subject of the applicable recalls, and none base their claims on the Ignition Switch Defect, each plaintiff (i) is prohibited from asserting an Independent Claim against New GM, and (ii) is prohibited from seeking punitive damages against New GM. Furthermore, the Sale Order and Injunction entered by the Bankruptcy Court in 2009 remains in full force and effect. With respect to Old GM vehicles (like the subject matter of the Lawsuits), either plaintiffs' claims are Assumed Liabilities of New GM, or Retained Liabilities of Old GM. There are no other applicable categories for such claims.

E. Conclusion

Please let us know as soon as possible whether the plaintiffs will take the required action and fully comply with the Bankruptcy Court's rulings.

Very truly yours,



Scott I. Davidson

SD/hs

cc: Megan Fischer, Esq.
Mary Quinn Cooper, Esq.
Kent Hanson, Esq.

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Tab Turner
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TURNER & ASSOCIATES, P.A.
Attorneys at Law

May 27, 2016

Scott Davidson
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Re: *Lemus v. GM*
Chapman v. GM
Tibbetts v. GM

Dear Mr. Davidson:

The purpose of this letter is to respond to your most recent letter regarding language in the Complaints referenced above. Although I understand your position that these are not "form letters", I respectfully disagree. As for substance, I respectfully disagree with your conclusions.

It is crystal clear from the Complaints at issue that there is no successor liability claim, no claim in these cases that New GM is responsible for old GM behavior, no pre-sale claims, and no claims for punitive damages for conduct that is prohibited under the rulings of the Bankruptcy court. This is a very simple product liability claim against New GM because New GM accepted responsibility for any liability Old GM has under product liability law in Arkansas and New Mexico. Although I realize everyone has to make a living, billing hourly for these kinds of letters is not helping advance any legitimate interest. We are all in agreement about the claims in the litigation; there is no confusion; and the positions you have taken thus far are vague, ambiguous, and seem to be designed for nothing other billing hours. Nevertheless, and in the spirit of cooperation, the following further responds to your inquiry in hopes that this will clarify the situation.

1. **SUCCESSOR LIABILITY**:

   - The word "successor" is a word used once in the complaints to describe a fact: the fact that GM, LLC did succeed, come after, follow, and be created after Old GM -- in laymen's terms -- in that there once was an Old GM and after bankruptcy, there is a New GM. Nowhere in the Complaints is there any claim, insinuation,

implication or even hint that under either Arkansas or New Mexico law New GM is legally responsible for the conduct of Old GM based on successor liability. That much is crystal clear and not even reasonable debatable.

- In case there is confusion, and as I am sure you are aware, in order to successfully plead a claim of successor liability against a corporation, the law, at least according to the traditional and product line approaches to successor liability, forbids a claim for successor liability unless an exception applies, which is must be plead. The exceptions include (1) the existence of an agreement for the successor to assume such liability; (2) allegations that the acquisition resulted from a fraudulent conveyance to escape liability for the debts or liabilities of the predecessor; (3) an acquisition that constituted a continuation or merger with the predecessor; or (4) an acquisition that resulted in the successor becoming a mere continuation of the predecessor. *Swayze v. A.O. Smith Corp.*, 694 F. Supp. 619, 622-24 (E.D. Ark. 1988) (applying Arkansas law)); *Garcia v. Coe Mfg. Co.*, 933 P.2d 243, 248-50 (N.M. 1997) (applying N.M. law. Here, none of the Complaints make any such allegation, raise none of the exceptions, and don't even hint that a claim for successor liability is plead.

- What the Court proscribed is likewise clear. The Court very clearly ruled that allegations that speak of New GM being liable for misconduct as the "successor" of Old GM (e.g. allegations that refer to New GM as the "successor of," a "mere continuation of," or a "de facto successor of" of Old GM) are proscribed by the Sale Order, April Decision and June Judgment, and that complaints that contain such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment. The very specific language of the Court's order does not focus on the word "successor", but on "allegations that speak of New GM being liable for misconduct as the successor of Old GM". I have looked at your references and no such "allegations" are made anywhere in the Complaints. If you believe there are, precisely where is such an allegation located? None can be found, but if you think I missed one, show me where and I will reconsider and amend the Complaints.

2. ALLEGATIONS THAT MERELY REFER TO "GM":

- As pointed out in my first letter, the Court has very clearly stated that allegations designed to mix New GM with Old GM are inappropriate. Examples include referring to "*GM-branded vehicles*", or that assert that New GM "*was not born innocent*", or any substantially similar phrase or language, are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision

and this Judgment. In short, the clear intent of the Order is to proscribe victims from using language that is “designed to mix” the two together using very clear examples, such as “GM-branded vehicles” or “was not born innocent”. I find neither of those examples in the Complaints nor do I see any language “designed to mix” the two together. If I am missing something, point it out and I am glad to reconsider.

- Notwithstanding the foregoing, references to “GM-branded vehicles” is permissible when the context is clear that the reference can only refer to New GM, and does not blend the periods during which vehicles were manufactured by Old GM and New GM; and complaints may say, without using code words as euphemisms for imposing successor liability, or muddying the distinctions between Old GM and New GM, that New GM purchased the assets of Old GM; that New GM assumed Product Liabilities from Old GM; and that New GM acquired specified knowledge from Old GM. The language I read in the Complaint makes crystal clear that GM, LLC is the defendant; that no conduct is “designed to be mixed”; and that no effort is being made to do anything other than what is permitted by the Court’s ruling. However, I will give you the benefit of the doubt and will agree to modify language that you feel is inappropriate and “designed to mix”. If such language exists in your view, please specifically point it out in each Complaint. I will then reconsider and modify the Complaint where appropriate.

3. ALLEGATIONS THAT NEW GM DESIGNED, MANUFACTURED OR DISTRIBUTED:

- The Court has ruled that allegations that allege or suggest that New GM manufactured or designed an Old GM Vehicle, or performed other conduct relating to an Old GM Vehicle before the Sale Order, are proscribed by the Sale Order, April Decision and June Judgment, and complaints containing such allegations are and remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

- As you will note from the Complaints, Old GM is not a defendant in the cases. We painstakingly set forth this history of the bankruptcy, including the fact that New GM has accepted responsibility for liability associated with the design, manufacture, testing, marketing and distribution of GM vehicles produced prior to the sale order. In accepting that responsibility, New GM is legally responsible for the design, manufacture, assembly, testing, marketing, and distribution of the vehicle at issue in each of the three (3) cases.

- I find no instance in the subject Complaints wherein my client alleges that New GM did anything prior to the sale order that results in liability. The Complaints, when read as a whole and with common sense, clearly seem to meet the requirements of the orders. However, in the spirit of cooperation, if there is an instance wherein you feel that Plaintiff is somehow making an allegation that New GM is somehow responsible under the law other than as the legally responsible party, I am more than glad to work with you to satisfy you that no such claim is being made, including amending the pleading where such a claim is asserted.

4. **PUNITIVE DAMAGES**:

- The Court ruled quite clearly that New GM did not contractually assume liability for punitive damages from Old GM. That is beyond dispute.

- It is equally clear that New GM is not liable for punitive damages based on Old GM conduct under any other theories, such as by operation of law. Therefore, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM.

- Each Complaint is consistent with the foregoing concepts and rulings.

- Notwithstanding the foregoing limitations, a claim for punitive damages with respect to a post-Sale accident involving vehicles manufactured by Old GM may be asserted against New GM to the extent—but only to the extent—it relates to an otherwise viable Independent Claim and is based solely on New GM conduct or knowledge, including (a) knowledge that can be imputed to New GM under the principles set forth in the Decision and Judgment (and under non bankruptcy law), and (b) information obtained by New GM after the 363 Sale. The extent to which any such claim is "viable" shall be determined under non-bankruptcy law by the non-bankruptcy court presiding over that action.

- Similarly, the Court expressed no view as to whether any punitive claim was viable. In fact, claims for punitive damages are permitted to be asserted in actions based on post-Sale accidents involving vehicles manufactured by Old GM to the extent the claim is premised on New GM action or inaction after it was on notice of information "inherited" by New GM, or information developed by New GM post-Sale. In fact, claims for punitive damages involving New GM manufactured vehicles were never foreclosed under the Sale Order, and remain permissible. The underlying allegations and evidence used to support such claims for punitive damages are subject only to the limitations, if any, provided by non-

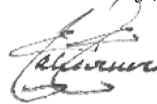
bankruptcy law. As for claims for punitive damages relating to post-Sale Non-Product Liabilities actions involving personal injuries suffered in vehicles manufactured by Old GM, claims may be asserted to the extent, but only the extent, they are premised on New GM knowledge and conduct, including "inherited" knowledge and knowledge acquired after the Sale. As for claims for punitive damages relating to post-Sale Non-Product Liabilities actions involving personal injuries suffered in vehicles manufactured by New GM are not subject to the Sale Order and may proceed. The underlying allegations and evidence used to support for punitive damages are subject only to the limitations, if any, provided by non-bankruptcy law.

- If I am reading you correctly, and granted I many not due to lack of clarity, but you seem to be arguing that the Court's ruling that punitive damages <u>can be pursued</u> is somehow limited only to ignition switch defect cases and <u>not</u> defect cases involving something other than ignition switches. Am I understanding you correctly? If so, I am more than glad to consider whatever support you have for such a proposition. However, I do not read the Court's opinion as saying that ignition switch cases receive special treatment over other similar defects involving other components or aspects of vehicles and that punitive damages are <u>only</u> available for ignition switch cases. Where does the Court say that? If there is such a ruling, then you have my apologies for missing it, but I simply don't see such a narrow holding anywhere in any of the opinions. In fact, to the contrary, the Court's repeated discussion about a victim's right to impute knowledge to New GM is a clear recognition that punitive damages are in fact available against New GM for its own post-bankruptcy conduct.

In summary, my clients are more than willing to cooperate to ensure all court orders are fully complied with in pleading. However, I am still having difficulty understanding your position given the vagueness with which you continue to respond. If there are genuine violations, at least in your view, please point them out with specificity and explain the reasoning and I am more than glad to reconsider.

Thank you for your consideration and let me know if I may be of further assistance.

Sincerely,



Tab Turner

CTT/lg

cc. Mary Quinn-Cooper
Megan Fischer
Rich Valle
Robert Ortiz

Exhibit T

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

VERONICA ALAINE FOX,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CIVIL ACTION FILE
	*	
	*	NO. 14A 3468-4
GENERAL MOTORS LLC and	*	
ATLANTA AUTO BROKERS, INC.,	*	
	*	
Defendants.	*	

RECAST & AMENDED COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Veronica Fox and files this Complaint for Damages against Defendants General Motors LLC ("GM LLC") and Atlanta Auto Brokers, Inc. ("AAB"), and respectfully shows the following:

INTRODUCTION

On November 12, 2013, Plaintiff Veronica Fox was rendered quadriplegic in a rollover wreck in the General Motors 2004 SRX she was driving. She was properly restrained in the vehicle. When the SRX rolled over, the top of the roof literally came off the vehicle, and the remaining roof structure buckled and collapsed on top of her. Her injuries were caused by the resulting roof crush that occurred during the rollover. Her injuries were entirely preventable. Her injuries would not have happened had General Motors Corporation ("GM Corp.") designed the 2004 SRX to provide proper protection for the occupants in a foreseeable rollover wreck. ~~They would not have happened if General Motors LLC ("GM LLC") would have warned her of the dangers of the roof design~~.

GM Corp. ~~and GM LLC~~ knew and expected that its vehicles ***would be*** involved in rollovers. GM Corp., like other automakers such as GM LLC, had the resources to design and manufacture automobiles that would provide proper protection to the occupants in a rollover. But GM Corp. designed the 2004 Cadillac SRX with a roof structure that *it knew* would utterly fail to provide such protection: the roof panel was made almost entirely of glass; the roof was secured to the vehicle by nothing but glue, with no welds or other mechanical fasteners; predictably, the entire, glued-on roof came off during the rollover, leaving a gaping hole in the top of the vehicle and depriving the roof system of the support the top of the roof should provide; there was little to no lateral support going across the roof to help support the sides of the vehicle when the roof panel came off during the roll; and the remaining roof structure was so inadequate, it buckled and crushed onto Veronica Fox's head, catastrophically and permanently injuring her. ~~GM LLC knew all these facts. Yet, it chose not to warn Veronica Fox, or anyone else, of the dangerous design of the 2004 SRX.~~

Plaintiff files this action to recover for the injuries caused by GM Corp.'s decision to adopt an unreasonably dangerous roof design, and for ~~GM LLC's and~~ Atlanta Auto Broker Inc.'s ("AAB") election not to warn citizens including Plaintiff Fox of the dangers of the 2004 SRX.

I. PARTIES, JURISDICTION, VENUE, & SERVICE OF PROCESS

1.

Plaintiff Veronica Fox is a citizen and resident of the State of Georgia. Plaintiff is subject to the jurisdiction of this Court.

2.

Defendant GM LLC is a foreign corporation organized and incorporated under the laws of Delaware, with its principal place of business located at 300 Renaissance Center, Detroit,

Michigan 48265. GM LLC, like GM Corp., is engaged in the business of designing, manufacturing, marketing, promoting, advertising, distributing, and selling automobiles, trucks, SUVs, and other types of vehicles in the State of Georgia, throughout the United States, and elsewhere.

3.

GM LLC is subject to the jurisdiction of this Court because it transacts business in this State and maintains a registered agent in this State: CSC of Cobb County, Inc., 192 Anderson Street S.E., Suite 125, Marietta, Georgia 30060. GM LLC may be served with legal process there.

4.

Venue is proper in Cobb County as to Defendant GM LLC under O.C.G.A. § 14-2-510 and GA. CONST. art. VI, § 2, ¶ VI, because Cobb County is where Defendant GM LLC maintains a registered agent.

5.

Defendant AAB is a domestic corporation organized and incorporated under the laws of Georgia, with its principal place of business located at P.O. Box 3262, Alpharetta, Georgia 30023. AAB is engaged in the business of buying, selling, and inspecting used automobiles in the State of Georgia.

6.

Defendant AAB is subject to the jurisdiction of this Court because it is incorporated in this State, it transacts business in this State, and maintains a registered agent in this State: Joe

Milligan, 487 Cobb Parkway, SE, Marietta, Georgia 30060. AAB may be served with legal process there.

7.

Venue is proper in Cobb County as to Defendant AAB under O.C.G.A. § 14-2-510 and GA. CONST. art. VI, § 2, ¶ VI, because Cobb County is where Defendant AAB maintains a registered agent and under GA. CONST. art. 6, § 2, ¶ IV because it is a joint tortfeasor with Defendant GM LLC.

II. OPERATIVE FACTS

8.

On November 12, 2013, at around 2:00 a.m., Veronica Alaine Fox was the restrained driver of a 2004 Cadillac SRX designed, manufactured, and sold by GM Corp. (VIN: 1GYDE63A740113793) ("the subject SRX" or "subject vehicle"). Carl Coward was a restrained passenger in the front right seat. The subject SRX was traveling north on I-285, past the intersection with Martin Luther King Dr.

9.

Plaintiff Veronica Fox was properly seated in the driver's seat, wearing her seat belt.

10.

While traveling down the highway, the SRX left the roadway. The SRX rolled over and came to rest off the shoulder north of Martin Luther King Dr.

11.

GM Corp. manufactured, designed, marketed, and distributed the subject vehicle with a defective roof which was unable to withstand the forces of this foreseeable and survivable event. As the direct and proximate result of the defects in the roof structure of the subject vehicle, the

roof panel came completely off during the wreck and the remaining structure crushed down on Plaintiff Veronica Fox during this incident, rendering her a quadriplegic.

12.

Defendant AAB inspected the vehicle and sold it to Plaintiff shortly before the wreck occurred. Defendant AAB had a duty to warn Veronica Fox of the danger posed by the SRX roof. AAB breached that duty.

13.

The defects and failures of the subject vehicle, combined with the acts and omissions of GM Corp.~~, GM LLC~~, and AAB, caused Veronica Fox's injuries.

14.

As a direct and proximate result of the subject vehicle's defects and failures and the tortious acts and omissions of GM Corp.~~, GM LLC~~, and AAB, Plaintiff Veronica Fox endured, continues to endure, and will endure in the future physical and emotional pain and suffering.

15.

GM Corp. designed, tested, manufactured, marketed, distributed, and sold the subject SRX, thereby placing it into the stream of commerce.

16.

The subject SRX was defective, unreasonably dangerous, and not fit for its ordinary use when manufactured as well as at the time of the subject incident because (a) the design GM Corp. chose for the roof structure did not offer proper protection to occupants in foreseeable crashes; (b) the risks of GM Corp.'s chosen design outweighed the utility of the design; and (c) GM Corp. did not implement safer, feasible, and practicable alternative designs that would have prevented Plaintiff Veronica Fox's injuries.

17.

GM Corp. could have reasonably foreseen and did, in fact, foresee the occurrence of rollovers such as the one described in this Complaint.

18.

But for GM Corp.'s negligent and defective design of the SRX, and the vehicle's failure to offer proper crash protection to occupants in foreseeable wrecks, Veronica Fox would not have been seriously injured in this wreck.

19.

At the time the subject SRX was manufactured and at all times since then, GM Corp. has had actual knowledge from, among other things, its notice of real-world incidents involving its vehicles, its own testing, and the laws of physics, that when a roof lacks sufficient structural crashworthiness, occupants are highly vulnerable to being injured, paralyzed, or killed in a rollover.

20.

Despite its knowledge set forth above, GM Corp. consciously designed the 2004 SRX, and other GM Corp. vehicles equipped with the same or similar performing roofs, so that occupants would be subject to injury from roof crush.

21.

Despite knowing at the time the subject Cadillac SRX was manufactured that safer alternative designs were technologically feasible, economically practicable, and fundamentally safer, GM Corp. wantonly and recklessly chose not to implement any of those alternative designs in the subject SRX and instead chose a design GM Corp. knew would result in preventable injuries and deaths in foreseeable wrecks.

22.

GM Corp.'s reckless and wanton conduct constituted disregard for the life and safety of Veronica Fox, and the lives and safety of the motoring public generally. GM Corp.'s reckless and wanton conduct also manifests a conscious indifference to the foreseeable consequences of that conduct to motorists like Veronica Fox.

23.

In 2009, after GM Corp. filed for Chapter 11 bankruptcy protection, Defendant GM LLC purchased ~~the~~ assets of GM Corp., including GM Corp.'s books and records.

24.

As part of its 2009 purchase of GM Corp., Defendant GM LLC expressly assumed liability for product liability claims (as set forth in the Sale Agreement and rulings by the Bankruptcy Court) against GM Corp. that arose after the bankruptcy sale.

25.

After the bankruptcy sale, Defendant GM LLC employed ~~the~~ engineers who designed the 2004 SRX roof, and GM LLC possessed all relevant knowledge, books, and records regarding the 2004 SRX roof design. In short, GM LLC acquired all knowledge regarding the 2004 SRX's defective roof from GM Corp.

26.

~~Defendant GM LLC could have reasonably foreseen and did, in fact, foresee the occurrence of rollovers such as the one described in this Complaint.~~

27.

~~Since the bankruptcy sale, Defendant GM LLC, like GM Corp., has had actual knowledge from, among other things, the knowledge of its engineers, the records and books it acquired from GM Corp., its notice of real-world incidents involving its and GM Corp.'s~~

vehicles, its and GM Corp.'s testing, GM LLC's decision to substantially strengthen the roof in the 2010 SRX, and the laws of physics, that when a roof lacks sufficient structural crashworthiness, occupants are highly vulnerable to being injured, paralyzed, or killed in a rollover.

28.

Since the bankruptcy sale, Defendant GM LLC, like GM Corp., has had actual knowledge from, among other things, the knowledge of its engineers, the records and books it acquired from GM Corp., its notice of real-world incidents involving its and GM Corp.'s vehicles, its and GM Corp.'s testing, GM LLC's decision to substantially strengthen the roof in the 2010 SRX, and the laws of physics, that the 2004 SRX roof was unreasonably dangerous and defective.

29.

Despite GM LLC's duty to warn and its knowledge of a need to warn the public, Defendant GM LLC failed at the time of the bankruptcy sale—and all times since—to adequately warn the consuming public, and Plaintiff in particular, of the dangers in a reasonably foreseeable wreck presented by the design of the SRX roof.

30.

Despite the knowledge set forth in the paragraphs above, Defendant GM LLC and GM Corp. wantonly and recklessly continued to sell the vehicle to the consuming public and maintained it in the stream of commerce without a warning, recall, or remedy of the vehicle's defects.

31.

~~Defendant GM LLC's and~~ GM Corp.'s reckless and wanton conduct constituted disregard for the life and safety of Veronica Fox, and the lives and safety of the motoring public generally. ~~GM LLC's reckless and wanton conduct also manifests a conscious indifference to the foreseeable consequences of that conduct to motorists like Veronica Fox~~.

32.

But for the tortious conduct of GM Corp. ~~and GM LLC,~~ Plaintiff Veronica Fox would not have been seriously injured in this wreck.

33.

As a direct and proximate result of GM Corp. ~~and GM LLC~~'s tortious conduct, Plaintiff Veronica Fox endured, continues to endure, and will endure in the future physical and emotional pain and suffering.

34.

No person other than Defendant GM LLC and Defendant AAB is liable for the injuries and damages sustained by Veronica Fox.

35.

Plaintiff's injuries and damages were proximately caused by the tortious acts and omissions of GM Corp.~~, GM LLC,~~ and AAB. The tortious acts and omissions of GM Corp.~~, GM LLC,~~ and AAB that caused the personal injuries to Veronica Fox are described more fully and specifically in the paragraphs below.

III. SPECIFIC COUNTS

COUNT ONE

Strict Liability of General Motors LLC

36.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 35 of this Complaint.

37.

GM Corp. is strictly liable to Plaintiff under O.C.G.A. § 51-1-11 and other applicable law because the risks inherent in the design of the roof structure in the 2004 Cadillac SRX outweighed any utility of the chosen design, thereby rendering the vehicle defective, unreasonably dangerous, and not reasonably suited to the use for which it was intended. The defects in the SRX include, but are not limited to, the following:

a. The roof structure in the SRX failed to offer proper protection to occupants like Veronica Fox during foreseeable rollover events;

b. The roof panel was made almost entirely of glass with a narrow rim of fiber glass;

c. The roof panel was attached to the vehicle by nothing but glue;

d. During the rollover, the entire roof panel came completely off the vehicle, leaving a gaping hole in the roof of the vehicle;

e. GM Corp. knew that the glued-on glass roof would not protect occupants in a rollover;

f. Despite this knowledge, GM Corp. did not design the remaining structure to protect occupants in a rollover;

g. GM Corp. designed the 2004 SRX with a strength-to-weight ratio of 1.9, which earned it the lowest possible rating for roof strength by the Insurance Institute for Highway Safety. *See* Exhibit A, IIHS Website, http://www.iihs.org/iihs/ratings/ratings-info/roof-strength-test (last visited May 19, 2016). According to IIHS, a strength-to-weight ratio of 1.9 is not "good," "acceptable," or even "marginal"—it is "**poor**." *Id.*;

h. GM Corp. did not adequately test the performance of the SRX's roof structure to determine whether prospective owners, users, and occupants of the 2004 SRX would be exposed to an unreasonable risk of physical harm during rollover events;

i. GM Corp. knew, or should have known, from the testing that was performed on the SRX and other GM Corp. vehicles with the same or similar roofs, from real world incidents, and from the laws of physics, that the SRX roof would fail, and GM Corp. knew that serious injury to vehicle occupants could result;

j. The SRX does not contain, and is not accompanied by, warnings to prospective owners, users, or occupants, including Plaintiff, either at the time of sale or post-sale, of the unreasonable risk of physical harm associated with the design of the roof structure of the 2004 SRX;

k. The SRX does not contain, and is not accompanied by, adequate warnings to prospective owners, users, or occupants, including Plaintiff, either at the time of sale or post sale, of the unreasonable risk of physical harm associated with the design of the roof structure of the 2004 SRX.

38.

Defendant GM LLC assumed liability for product liability claims against GM Corp. that arose after the bankruptcy sale (as set forth in the Sale Agreement and rulings by the Bankruptcy Court). Plaintiff's strict liability claims against GM Corp. are properly asserted against GM LLC.

39.

The defects in the 2004 Cadillac SRX, in concert with the acts and omissions of ~~Defendants GM LLC and~~ AAB, proximately caused Plaintiff's injuries and damages.

40.

Defendants are liable for the injuries and damages Plaintiff suffered.

COUNT TWO

Negligence of General Motors LLC

41.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 40 of this Complaint.

42.

GM Corp. owed a duty to the consuming public in general, and Plaintiff in particular, to exercise reasonable care to design, test, manufacture, inspect, market, and distribute a product free of unreasonable risk of harm to owners, users, and occupants.

43.

At the time GM Corp. manufactured, marketed, distributed, and sold the 2004 SRX, GM Corp. could reasonably have foreseen and did, in fact, foresee the occurrence of rollover events such as the one described in this Complaint.

44.

GM Corp. breached its duty to exercise reasonable care as set forth in the paragraphs above.

45.

In concert with the acts and omissions of Defendant AAB ~~and GM LLC~~, GM Corp.'s negligence proximately caused Plaintiff's injuries and damages.

46.

Defendant GM LLC assumed liability for product liability claims against GM Corp. that arose after the bankruptcy sale (as set forth in the Sale Agreement and rulings by the Bankruptcy Court). Plaintiff's negligence claims against GM Corp. are properly asserted against GM LLC.

47.

Defendants are liable for the injuries and damages suffered by Plaintiff.

~~**COUNT THREE**~~

~~**General Motors LLC's Failure to Warn**~~

~~48.~~

~~Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 47 of this Complaint.~~

~~49.~~

~~GM LLC could reasonably have foreseen and did, in fact, foresee the occurrence of rollover events such as the one described in this Complaint.~~

~~50.~~

~~GM LLC owed a duty to the consuming public in general, and to Plaintiff in particular, to warn of the dangers arising from the design of the SRX.~~

51.

GM LLC knew after the bankruptcy sale about the danger of the roof of the 2004 SRX, but chose not to warn the public or Plaintiff about that danger.

52.

In concert with the acts and omissions of Defendant AAB and GM Corp., GM LLC's failure to warn proximately caused Plaintiff's injuries and damages.

53.

Defendants are liable for the injuries and damages Plaintiff suffered.

COUNT FOUR

Punitive Damages

54.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 53 of this Complaint.

55.

GM LLC acted with conscious indifference to the safety and well-being of the public in failing to effectively repair or warn about the dangers of the 2004 SRX. GM LLC knew or should have known of those dangers. GM LLC purchased all GM Corp.'s books and records revealing the defective and dangerous design of the 2004 SRX roof. GM LLC employed the same engineers who designed and knew about the defective and dangerous design of the 2004 SRX roof. Despite knowing of the dangers posed by the 2004 SRX, GM LLC acted wantonly and with conscious indifference to the safety and well-being of the public, as defined by O.C.G.A. § 51-12-5.1, in failing to repair or warn about the dangers of the 2004 SRX.

56.

~~Defendant GM LLC's own failure to warn, which occurred after the June 2009 bankruptcy sale, was so egregious that it rises to the level of conscious indifference to the safety and well-~~being of the public under O.C.G.A. § 51-12-5.1. Such misconduct warrants the ~~imposition of punitive damages against GM LLC.~~

<u>COUNT FIVE</u>

Statute of Repose

57.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 56 of this Complaint.

58.

The willful and wanton misconduct by GM Corp. ~~and GM LLC~~ referenced in this Complaint precludes the application of any statute of repose as a defense. Georgia's statute of repose does not bar claims when the defendant acted with willful and wanton disregard of the dangers of its conduct.

59.

~~GM LLC's failure to warn of the dangers referenced in this Complaint precludes the application of any statute of repose as a defense. Georgia's statute of repose does not bar claims when the defendant failed to warn of the dangers which were known to or should have been known to the defendant.~~

COUNT SIX

Atlanta Auto Brokers, Inc.'s Failure to Warn

60.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 59 of this Complaint.

61.

Defendant AAB sold the subject 2004 Cadillac SRX to Plaintiff Veronica Fox on or about September 27, 2013, less than two months before the wreck that is the subject of this Complaint.

62.

AAB is in the business of buying, selling, and inspecting cars. It has been in that business for over 20 years. As a result of this extensive experience, AAB has specialized and superior knowledge about cars, car repair and parts, vehicle safety, and vehicle quality.

63.

Before selling the vehicle to Plaintiff, Defendant AAB undertook to inspect the vehicle for Plaintiff's benefit. It therefore had a duty to conduct its inspection non-negligently.

64.

Plaintiff originally sought to purchase a Chevrolet Suburban at AAB, but AAB's inspection had revealed the Suburban needed repairs. AAB therefore discouraged Plaintiff from purchasing that vehicle. AAB told Plaintiff that the SRX had passed its inspection. AAB therefore encouraged her to choose the SRX instead of the Suburban. Plaintiff relied upon AAB's inspection and its statements about the inspection when she chose to purchase the subject SRX.

65.

AAB also detailed the car before selling it Plaintiff. AAB's inspection and detail of the vehicle either did or should have revealed the dangers of the SRX roof, including but not limited to the fact that the roof was made almost entirely of glass and was attached by nothing but glue. A lay person like Plaintiff would not know that the roof was made of glass because the rear panels of glass were concealed from the inside by the headliner. Plaintiff, in fact, did not know that the roof was made almost entirely of glass until after the wreck occurred.

66.

Defendant AAB encouraged Plaintiff to purchase the SRX because of the sunroof. AAB repeatedly emphasized the sunroof as a selling feature because it extended to the second row of seats. AAB's statements about the sunroof were incomplete and misleading because AAB did not inform Plaintiff that the glass actually extended almost the entire length of the vehicle and because the structure of the roof was itself a deadly design defect.

67.

AAB provided safety warnings to Plaintiff about the use of the sunroof, advising her not to allow passengers to "hang out of the sunroof." AAB's warnings were incomplete and misleading because they suggested that the only danger associated with the roof was the danger of passengers being injured as a result of a decision to "hang out of the sunroof."

68.

Defendant AAB knew or should have known that the SRX roof would not protect occupants in the event of a rollover wreck and therefore had a duty to warn Plaintiff about the dangers created by the SRX roof. AAB's actual or constructive knowledge was a result of its superior knowledge of vehicle parts, quality, and safety, generally—and the SRX's parts, quality,

and safety, specifically; its inspection of the vehicle; and its knowledge about the SRX roof and sunroof.

69.

Defendant AAB knew or reasonably should have known that the SRX roof was dangerous and could result in serious or catastrophic injury or death in foreseeable rollover wrecks.

70.

Plaintiff would not have purchased the SRX had she been informed of and known about the dangers of the roof.

71.

In concert with the acts and omissions of GM Corp. ~~and GM LLC,~~ AAB's failure to warn proximately caused Plaintiff's injuries and damages.

72.

Defendant AAB is liable for the injuries and damages Plaintiff suffered.

DAMAGES & PRAYER FOR RELIEF

73.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 72 of this Complaint.

74.

As a direct result of the defective condition of the 2004 SRX, GM Corp.'s negligence, ~~GM LLC's failure to remedy or give appropriate warnings about the vehicle,~~ and AAB's failure to warn about the vehicle, Plaintiff Veronica Fox has suffered severe and permanent personal injuries, including quadriplegia.

75.

Plaintiff Veronica Fox seeks damages from Defendants in an amount to be determined by the enlightened conscience of the jury and as demonstrated by the evidence, for all elements of compensatory damages allowed by Georgia law. Plaintiff's injuries are permanent, and damages sought include the following:

a. all components of the mental and physical pain and suffering Veronica Fox endured upon impact and up until the present time;

b. all components of the mental and physical pain and suffering Veronica Fox will endure in the future;

c. past and future loss of enjoyment of life; and

d. all past and future economic losses, including medical bills, medical expenses, other necessary expenses for the care and treatment of Veronica Fox, including household services.

~~e. Punitive damages against Defendant GM LLC, pursuant to O.C.G.A. § 51-12-5.1, in an amount to be determined by the enlightened conscience of the jury to be sufficient to punish GM LLC for the harm caused to them and to deter GM LLC from similar misconduct.~~

76.

WHEREFORE, Plaintiff prays for the following relief:

a. That summons issue and service be perfected upon Defendants requiring them to appear before this Court and answer this Complaint for Damages;

b. That judgment be entered against Defendants;

c. That Plaintiff Veronica Fox recovers all elements of compensatory damages, including general and special damages, against Defendants;

d. ~~That Plaintiff Veronica Fox recovers punitive damages against Defendant GM LLC;~~

e. That all costs be cast against Defendants; and

f. That Plaintiff has such other and further relief as this Court deems just and proper.

This 20th day of May, 2016.

Respectfully submitted,

BUTLER WOOTEN & CHEELEY & PEAK LLP

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KENNETH S. NUGENT PC

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1. (404) 885-1983

ATTORNEYS FOR PLAINTIFF

EXHIBIT A

About our tests

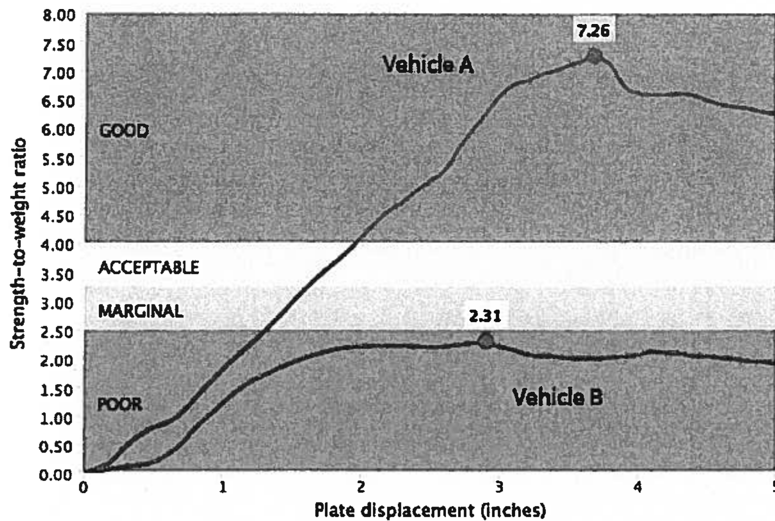
IIHS evaluates a vehicle's crashworthiness with the help of five tests: moderate overlap front, small overlap front, side, roof strength and head restraints & seats. For front crash prevention ratings, the Institute conducts low- and moderate-speed track tests of vehicles with automatic braking systems. IIHS also conducts evaluations of headlight systems and of the child seat attachment hardware known as LATCH. The descriptions below explain how each test is conducted and how the results translate into **ratings**.

Thousands of people are killed each year in rollovers. The best way to prevent these deaths is to keep vehicles from rolling over in the first place. Electronic stability control is significantly reducing rollovers, especially fatal single-vehicle ones. When vehicles do roll, side curtain airbags help protect the people inside, and belt use is essential. However, for these safety technologies to be most effective, the roof must be able to maintain the occupant survival space when it hits the ground during a rollover. Stronger roofs crush less, reducing the risk that people will be injured by contact with the roof itself. Stronger roofs also can prevent occupants, especially those who aren't using safety belts, from being ejected through windows, windshields or doors that have broken or opened because the roof has deformed.

In the test, the strength of the roof is determined by pushing a metal plate against one side of it at a slow but constant speed. The force applied relative to the vehicle's weight is known as the strength-to-weight ratio. This ratio varies as the test progresses. The peak strength-to-weight ratio recorded at any time before the roof is crushed 5 inches is the key measurement of roof strength.

A good rating requires a strength-to-weight ratio of at least 4. In other words, the roof must withstand a force of at least 4 times the vehicle's weight before the plate crushes the roof by 5 inches. For an acceptable rating, the minimum required strength-to-weight ratio is 3.25. For a marginal rating, it is 2.5. Anything lower than that is poor.

The figure below shows sample results for two vehicles — one rated good and one rated poor. Peak force for Vehicle A is 7.26. Since that number is higher than 4, the vehicle is rated good. Peak force for Vehicle B is 2.31. Since that number is lower than 2.5, the vehicle is rated poor.



The following video shows how the roof strength test is conducted. In this test of the 2010 Buick LaCrosse, the peak force is 19,571 pounds for a strength-to-weight ratio of 4.90 and a good rating. The playback speed of this video has been increased. The plate normally crushes at a rate of about 1/8 inch per second.

In every test, the roof is crushed 5 inches. What varies — and can't be seen in a video — is the force used by the machine to achieve that degree of crush. To demonstrate how roof strength can vary and what those differences mean for people inside a vehicle during a rollover, IIHS conducted a demonstration in which two vehicles with different roof strength ratings were subjected to identical force. This video shows what happened when the 2009 Volkswagen Tiguan, rated good for roof strength, and the 2008 Kia Sportage, rated poor, were each subjected to a crush force of 15,000 pounds.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record with a copy of the foregoing pleading by depositing it in the United States Mail with adequate postage affixed thereon and addressed as follows:

Kevin J. Malloy, Esq.
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This 20th day of May, 2016.

BUTLER WOOTEN CHEELEY & PEAK LLP

BY: ______________________
JAMES E. BUTLER, JR.
Georgia Bar No. 099625
TEDRA L. CANNELLA
Georgia Bar No. 881085
ROBERT H. SNYDER
Georgia Bar No. 404522

Exhibit U

FILED IN MY OFFICE
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STEPHEN T. PACHECO
byh

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

THE WRONGFUL DEATH ESTATE
OF CLAUDIA LEMUS, Deceased,
by and through, DAVID P. GARCIA,
as Personal Representative,

Plaintiff,

v. **No.** D-101-CV-2013-03270

GENERAL MOTORS, LLC and
PERFORMANCE CHEVROLET, PERFORMANCE BUICK GMC,
and HI-COUNTRY CHEVROLET, INC.

Defendants.

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff, by and through her counsel, Carter & Valle Law Firm, P.C., (Richard J. Valle), Emeterio L. Rudolfo, and TURNER & ASSOCIATES, P.A. (*pro hac vice pending*) and bring the following action against Defendants pursuant to applicable New Mexico law:

PARTIES

1. Plaintiff David P. Garcia is an appropriate person to serve as personal representative for purposes of presenting the Estate's claims herein. Mr. Garcia is a practicing attorney licensed in the State of New Mexico located in Santa Fe, New Mexico.

2. Plaintiff requests that the Court appoint David P. Garcia as the wrongful death Personal Representative as provided under New Mexico law.

3. Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company ~~and the successor to GM~~. On July 10, 2009, Old GM's ~~GM's~~ continuing operational assets were

transferred to “Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, Old GM ~~GM~~ filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. Old GM ~~GM~~ filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009~~, with a plan to re-emerge as a less debt-burdened organization~~. The filing reported $82.29 billion in assets. The "new GM," or “GM-LLC” was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in New GM ~~GM.~~ The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from Old GM ~~GM~~. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company~~, marking the emergence of a new operation from the "pre-packaged" Chapter 11 reorganization~~. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted

responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. ~~Prior to June 1, 2009,~~ ~~General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as~~ GM-LLC~~, was and~~ is authorized to conduct business in New Mexico, owns property in New Mexico, conducts business in New Mexico and derives significant revenue from its activities in New Mexico, and is therefore subject to be sued in New Mexico courts. Since July 10, 2009, ~~At all times relevant to the complaint,~~ GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles~~, including the defective truck that forms the subject matter of this litigation~~. The GM agent for service of process resides in New Mexico.

4. Defendant PERFORMANCE CHEVROLET is a New Mexico corporation that sold the vehicle at issue. Defendants PERFORMANCE BUICK GMC, and HI-COUNTRY CHEVROLET, INC. are on information and belief the successors in interest to PERFORMANCE CHEVROLET and are collectively referred to as "Dealer" or "Dealers."

JURISDICTION AND VENUE

5. All of the material acts and/or omissions complained of herein occurred in San Juan County, State of New Mexico.

6. This Court has original jurisdiction over Plaintiff's claims pursuant to NMSA 1978 § 41-4-18.

7. Venue is properly laid in this district pursuant to NMSA 1978 § 38-3-1(F) and § 41-4-18(B).

FACTS COMMON TO ALL CAUSES OF ACTION

8. At approximately 9:55 p.m. on February 20, 2013, decedent Lemus was driving her 2008 GMC pickup on Highway 550 at a safe and reasonable speed given the surrounding conditions.

9. As decedent Lemus approached mile marker 115, undetectable icy conditions on the roadway caused the vehicle to begin to skid. The vehicle crossed over the center median and into other traffic lanes before rolling over and coming to rest on its roof.

10. As the vehicle rolled, and despite wearing her safety belt at all times, decedent Lemus died as a result of fatal injuries caused and/or enhanced by the crash.

11. Decedent Lemus endured intense physical pain and suffering, emotional distress and fear during the course of the incident described above until her death.

12. The defective vehicle which forms the basis for this suit is a 2008 GMC truck designed, tested, manufactured, assembled, and/or distributed by Old GM ~~GM-LLC.~~

COUNT I
STRICT LIABILITY

13. Plaintiff incorporates all prior allegations as if fully set forth herein.

14. The subject pickup truck is defective and unreasonably dangerous by design when used as marketed by Old GM ~~GM-LLC~~. The inherent defects in the design were present at the time the vehicle was manufactured and distributed. The defects in the vehicle were a proximate and producing cause of the enhanced injuries, death and damages. At all times relevant to the Complaint, Old GM ~~GM-LLC~~ was in the business of designing, manufacturing or otherwise distributing automobiles. The defective nature of the design of the truck included defects in design; stability;

handling; marketing; instructions; warning; crashworthiness; rollover resistance and controllability. The defective nature of the vehicle includes the following

A. The truck is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency situations, both alone and in towing combinations, and does not remain controllable under all operating conditions as required by ~~GM-LLC~~ Old GM guidelines, including the tendency to oversteer and skate;

B. The combination of the conditions described in subparagraphs (a) through (b) above creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

C. The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable emergency situations, including towing situations, and maneuvers, which ~~GM-LLC~~* had both actual and constructive knowledge would lead to rollover crashes. ~~GM-LLC~~*'s knowledge included both actual knowledge based on its test history with SUVs; its research and knowledge of rollover in foreseeable turning maneuvers; and given its corporate history with respect to truck-type product designs;

*replace: Old GM

D. The risk of operating the vehicle as designed outweighed any benefits associated with the design and ~~GM-LLC~~* knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries; and knew that rollover crashes were particularly dangerous;

*replace: Old GM

E. ~~GM-LLC~~ Old GM knew that this type vehicle was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds, including while towing;

F. The truck was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system – roof, safety belt system, and glazing design – that would effectively provide reasonable protection in the event of a rollover. ~~GM-LLC~~* knew that the belt system would not effectively and reasonably restrain occupants involved in freeway-speed rollovers and ~~GM-LLC~~* knew of the risk that the roof was not sufficiently strong to provide a safety cage for the occupants, and that countermeasures for rollover resistance and rollover occupants protection were both technologically and economically feasible at the time of manufacture, and that these features (roll stability control; ESC; pretensioning; safety canopies and integrated belts) were necessary and reasonable features to protect occupants, keep them inside the safety zone, and keep the safety zone from collapsing. Despite knowledge of these risks, and the availability of alternative safer designs,

*replace: Old GM

Old GM ~~GM-LLC~~ intentionally marketed the vehicle to consumers for use as a freeway, passenger-carrying vehicle, and intentionally led consumers to believe that it was safe, stable, and would provide state of the art protection to occupants in rollovers despite clear knowledge that key safety technology was not incorporated into the product;

G. Old GM ~~GM-LLC~~ knew that the vehicle was not sufficiently equipped with restraints (including buckles) that were designed to perform safely in rollovers, despite the fact that GMC marketed the vehicle for freeway use while towing;

H. Old GM ~~GM-LLC~~ had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, and that the alternatives were technologically feasible and available;

I. Old GM ~~GM-LLC~~ ~~willfully~~, ~~wantonly~~, ~~and consciously~~ marketed the truck for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.

15. The defective nature of the vehicle was a proximate and producing cause of the accident, injuries, death of decedent Lemus and damages suffered by the Plaintiffs. GM-LLC is therefore strictly liable for supplying a defective and unreasonably dangerous product that resulted in personal injury, death and property damage.

16. A safer alternative design was economically and technologically feasible at the time the product left the control of Old GM ~~GM-LLC~~, both with respect to handling and rollover propensity and crash protection.

17. Dealers are liable as provided under New Mexico Law for their distribution of the defective vehicle.

COUNT II
NEGLIGENCE (GM-LLC)

18. Plaintiff incorporates all prior allegations as if fully set forth herein.

19. At all times relevant to this Complaint, Old GM ~~GM-LLC~~ was in the business of supplying motor vehicles for use on the public roadways. Old GM ~~GM-LLC~~ held themselves out to

the public as having specialized knowledge in the industry, especially with respect to truck products with towing capability. As such, ~~GM-LLC~~ Old GM owed consumers, including the Plaintiff, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the truck. ~~GM-LLC~~ Old GM violated this duty by negligently supplying a vehicle that was defective and not reasonably safe for the uses for which it was marketed. The negligent acts* [*insert: "of Old GM"] include but are not limited to the following acts or omissions:

a. Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;

b. Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;

c. Negligently designing and testing the vehicle from an occupant protection standpoint;

d. Negligently testing of the vehicle from a handling and stability standpoint when towing;

e. Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover, and to ensure that towing capability was reasonably safe;

f. Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;

g. Failing to disclose known defects, dangers, and problems to both dealers and the public;

h. Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;

i. Failure to meet or exceed internal corporate guidelines;

j. Negligently advertising the vehicle as safe and stable towing vehicle;

k. Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of roll sensing, pretensioners, side air bags (canopies) and curtain technology, including ejection reduction, and integrated seating technology;

l. Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

m. ~~Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;~~

n. ~~Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.~~

20. These acts of negligence were a proximate and producing cause of the accident, injuries, death and damages suffered by the Plaintiff. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT III
BREACH OF WARRANTY

21. Plaintiff incorporates all prior allegations as if fully set forth herein.

22. At all times relevant to the complaint, Old GM ~~Defendant GM-LLC~~ was a "merchant" in the business of supplying "goods". The truck was a "good" and/or "product" sold for consumer usage under applicable New Mexico law.

23. Prior to the sale of the truck, and release of the truck into the marketplace, Old GM ~~GM-LLC~~ had reason to know the purpose for which Lemus specifically - and as a general consumer of the products which were designed, manufactured, and marketed by Old GM ~~GM-LLC~~, individually and/or in tandem - bought the truck.

24. Old GM ~~GM-LLC~~ had reason to know that decedent Lemus was relying on GM-LLC's skill or judgment to design, manufacture, market, and select goods suitable for the purpose for which they were sold.

25. Decedent Lemus relied on Old GM ~~GM-LLC~~ to design, manufacture, market, and select the appropriate goods.

Old GM

26. As such, ~~GM-LLC~~ breached the warranties of merchantability and fitness for a particular purpose in that the truck in question was not fit for ordinary use or for the intended use for which it was purchased.

Old GM's

27. ~~GM-LLC's~~ warranties extended to Plaintiff.

28. These breaches of warranty proximately resulted in the accident, injuries, death and damages suffered by the Plaintiff.

29. Notice has been provided as required by law.

DAMAGES

30. Plaintiff incorporates all prior allegations as if fully set forth herein.

31. As a direct and proximate result of negligence of the Defendants as set forth herein, Plaintiffs incurred and seek the following general and special damages, including damages for wrongful death:

A. Wrongful death damages for the Estate of decedent Lemus;
B. Pain and suffering and emotional distress, past and future;
C. Funeral and burial expenses;
D. Reasonable and necessary medical and non-medical care, treatment and services;
E. The nature, extent, and duration of Plaintiffs' injuries;
F. Loss of guidance and counseling for the minor children who have survived the death of their mother;
G. Physical impairment;
H. The aggravating circumstances attending the wrongful acts and omissions of the Defendant;
I. Any appropriate punitive damages.* *insert: ", as against Defendants other than New GM,"

32. ~~As discussed in the aforementioned paragraphs, and pursuant to UJI 13-1827 on punitive damages, the conduct of Defendant GM-LLC was willful, reckless, and/or wanton and gives rise to punitive damages as outlined above~~.

WHEREFORE, Plaintiff requests the following relief:

a. Awards of general and special compensatory damages as set forth above;

b. Their costs of action herein;

c. Interest as allowed by law;

*insert: ", as against Defendants other than New GM."

d. Any appropriate punitive damages*; and,

e. Such other and further relief as the Court may deem appropriate under the circumstances.

Respectfully submitted,

CARTER & VALLE LAW FIRM, P.C.

/s/ Richard J. Valle

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Exhibit V

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CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

TAMMIE CHAPMAN, Personal Representative of the Estate of AUBREY CHAPMAN, Deceased, Plaintiff, vs. GENERAL MOTORS, LLC; NABHOLZ, INC.; RUSSELL CHEVROLET COMPANY Defendants.	**Civil Action:** __________

ORIGINAL COMPLAINT

Plaintiff, TAMMIE CHAPMAN, Personal Representative of the Estate of AUBREY CHAPMAN, Deceased, submits the following Complaint against Defendants, stating:

1.

This is a products liability, negligence, and wrongful death action brought pursuant to Arkansas law. The single vehicle rollover crash that forms the subject of this litigation occurred on July 26, 2012, while the Decedent was traveling through Colorado. The subject vehicle, including the safety system, was placed into the chain of commerce, distributed, and maintained in Pulaski County, Arkansas.

2.

Plaintiff TAMMIE CHAPMAN is a citizen and resident of Hot Spring County, Arkansas, and the former spouse of the Decedent. She is the duly-appointed Administratrix and Personal Representative of the Estate of AUBREY CHAPMAN, Deceased. AUBREY CHAPMAN was a citizen and resident of Hot Spring County, Arkansas at the time of his death with his residence in Bismarck, Arkansas.

3.

Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company ~~and the successor to GM.~~ On July 10, 2009, ~~GM's~~ Old GM's continuing operational assets were transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, ~~GM~~ Old GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. ~~GM~~ Old GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009~~, with a plan to re-emerge as a less debt-burdened organization~~. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in ~~GM~~ New GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from ~~GM~~ Old GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company~~, marking the emergence of a new operation from the "pre-packaged" Chapter 11 reorganization~~. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. ~~Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as~~ GM-LLC~~, was and~~ is authorized to conduct business in Arkansas, owns property in Arkansas, conducts business in

Arkansas and derives significant revenue from its activities in Arkansas, and is therefore subject to be sued in Arkansas courts. At all times relevant to the complaint, GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles~~, including the defective truck that forms the subject matter of this litigation~~. GM conducts business in Arkansas and is subject to jurisdiction in Arkansas. GM may be served with process through its registered agent, Corporation Service Company, 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock, Arkansas, 72201.

4.

Since July 10, 2009, GM-LLC ~~At all times relevant to the subject complaint, *GM*~~ was in the business of designing, developing, testing, assembling, manufacturing, marketing, and distributing automobiles~~, including the subject 2004 model Silverado C1500 pickup truck, worldwide~~.

5.

Defendant NABHOLZ, INC. (hereinafter "*Nabholz*") is an Arkansas for profit corporation whose business address includes offices at 3000 W. 68th Street, Little Rock, Arkansas. *NABHOLZ* was authorized to conduct business in Arkansas, conducted business in Arkansas, had agents in Arkansas, and derived economic profit from Arkansas. As such, *NABHOLZ* is subject to personal jurisdiction in Arkansas and may be served with process through its agent, Greg Williams, 612 Garland, Conway, Arkansas 72032.

6.

RUSSELL CHEVROLET COMPANY (hereinafter *Russell*) is an Arkansas corporation whose primary business is located at 6100 Landers Road, North Little Rock, Pulaski County, Arkansas. *Russell* is an authorized GM dealership, providing inventory of new and used cars and SUVs for the consuming public. *Russell* placed the vehicle in question into the stream of commerce in a defective and unreasonably dangerous condition and provided service and maintenance. *Russell* may be served with process through its registered agent, Bob Russell at 6100 Landers Road, Sherwood, Arkansas, 72120.

7.

JURISDICTION AND VENUE

Venue is appropriate in Pulaski County, Arkansas, because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, and the county of defendant's residence. The amount in controversy exceeds the jurisdictional limits of the court.

8.

FACTUAL BACKGROUND

This is a products liability, negligence, and wrongful death action brought pursuant to Arkansas law. The single vehicle rollover crash that forms the subject of this litigation occurred on July 26, 2012, while the Decedent was traveling through Colorado. The subject vehicle, including the safety system, was placed into the chain of commerce, distributed, and maintained in Pulaski County, Arkansas. At all times relevant to the Complaint, Old GM, Nabholz, and Russell ~~Defendants~~ were in the business of designing, developing, assembling, testing, manufacturing, and distributing vehicles and tires for use by consumers.

9.

The 2004 model Old GM ~~GM~~ pickup was designed, manufactured, marketed, distributed and sold by Old GM ~~*GM*~~ *and Russell.* The truck was designed and marketed for use on the freeways as a safe and stable passenger-carrying vehicle.

10.

The Old GM ~~GM~~ truck was equipped with a safety belt system that was designed, tested, manufactured and distributed, individually and jointly, by Old GM ~~*GM*~~ and suppliers. Old GM ~~*GM*~~ created all design and performance specifications, including the choice of restraints and safety systems to be designed into the vehicle. At all times relevant to the complaint, the restraint system, including the buckle, were defective and unreasonably dangerous.

11.

COUNT I
(Strict Liability/Products Liability – Design Defect)
GM-RUSSELL

At all times relevant to the complaint, Old GM and Russell ~~the defendants~~ were in the business (for profit) of designing, manufacturing, assembling, marketing, and distributing automobiles and auto components, including tires and safety belt systems. The products in question – the Old GM ~~GM~~ truck, and the occupant safety equipment (belt-roof-glazing), all contained design defects at the time the product was manufactured, all of

which combined to cause, proximately cause, and result in the producing cause of the damage, injuries, enhanced injuries, and damages alleged herein. The referenced design defects in the products are and were conditions of the products that rendered the products unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in use. At all times relevant to the Complaint, "safer alternative designs" existed, other than the ones actually used for the vehicle and tire, that in reasonable probability would have prevented or significantly reduced the risk of the occurrence or injury in question without substantially impairing the product's utility; and were economically and technologically feasible at the time the products left the control of ~~the defendants~~ Old GM and Russell by the application of existing or reasonably achievable scientific knowledge.

12.

The defective nature of the design of the truck included defects in design, stability, handling, marketing, instructions, warning, crashworthiness, rollover resistance and controllability, including the tendency to skate. The defective nature of the vehicle includes the following:

- The truck is defective in that the design of the "package," which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of loss of control and rollover given the uses for which the vehicle was marketed;

- The truck is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency turning maneuvers and does not remain controllable under all operating conditions as required by ~~GM~~ Old GM guidelines, including the tendency to overseer and skate in foreseeable turning maneuvers;

- The truck is unreasonably dangerous from a stability standpoint because it rolls over instead of slides when loss of control does occur on relatively flat level surfaces during foreseeable steering maneuvers;

- The truck is defective from a handling standpoint because it has an unreasonable tendency to get oversteer, skate and get sideways in emergency situations, and does not remain controllable under all operating conditions as required by ~~GM~~ Old GM guidelines;

- The combination of the foregoing creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

*replace: "Old GM's" or "Old GM" where applicable

- The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable turning maneuvers that are consistent with ~~GM's~~* effort to market the vehicle as a passenger-carrying vehicle at freeway speeds, which ~~GM~~ had both actual and constructive knowledge would lead to rollover crashes. ~~GM's~~* knowledge included both actual knowledge based on its test history with trucks and SUVs; its research and knowledge of rollover in foreseeable turning maneuvers;

- The vehicle was defectively marketed in that consumers were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying vehicle when ~~defendants~~ knew that this was untrue;
Old GM and Russell

- The risk of operating the vehicle as designed outweighed any benefits associated with the design and ~~the defendants~~* knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries; and knew that rollover crashes were particularly dangerous;
*insert: Old GM and Russell

- ~~The defendants~~* knew that this type vehicle—a light truck —was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds; *insert: Old GM and Russell

*replace: "Old GM"

- The truck was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system—roof, safety belt system, and glazing design—that would effectively provide reasonable protection in the event of a rollover. ~~GM~~* knew that the belt system would not effectively and reasonably restrain occupants involved in freeway-speed rollovers, including actual knowledge learned from suppliers in the industry as early as 1996, and ~~GM~~* knew of the risk that the roof was not sufficiently strong to provide a safety cage for the occupants. Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing—such as pretensioners and side airbags or curtains— ~~GM~~* intentionally marketed the vehicle to consumers for use as a freeway, passenger-carrying vehicle, and intentionally led consumers to believe that it was safe, stable, and would provide state of the art protection to occupants;

Old GM and Russell
- ~~The defendants~~ had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

Old GM and Russell
- ~~The defendants willfully, wantonly, and consciously~~ marketed the truck for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public, including information about vehicle failures worldwide;

Old GM *insert: Old GM

- ~~GM~~ failed to act appropriately to take reasonable steps to protect occupants in the event of a rollover. ~~GM's~~* ~~conscious~~ disregard for known facts surrounding available technology and the performance of the truck constitutes malicious conduct under applicable law.

13.

The defective nature of the truck was a proximate and producing cause of the crash and injuries and damages suffered by Plaintiffs. The products were in the substantially the same condition on the date of the crash as they were at the time of manufacture. The Defendants are therefore strictly liable for supplying a defective and unreasonably dangerous product(s) that resulted in plaintiffs' personal injury and property damage.

14.

COUNT II
NEGLIGENCE

At all times relevant to the Complaint, defendant ~~GM~~ Old GM was in the business of supplying motor vehicles, components, and safety equipment for use on the public roadways in Arkansas. ~~The defendant~~ Old GM, Nabholz and Russell held themselves out to the public as having specialized knowledge in the industry, especially with respect to trucks, SUVs and safety components. As such, ~~the defendant~~ Old GM, Nabholz and Russell, individually and jointly, owed consumers, including the plaintiffs, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the truck and safety equipment. ~~The defendant~~ Old GM, Nabholz and Russell violated this duty by negligently supplying a vehicle that were defective, unreasonably dangerous, and knowingly harmful to consumers when used as marketed. The negligent acts* include but are not limited to the following acts or omissions:

*insert: of Old GM, Nabholz and/or Russell

- Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;
- Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;
- Negligently designing and testing the vehicle so as to assure its controllability;
- Negligently testing of the vehicle from a handling and stability standpoint, including negligent failure to appropriately test and evaluate the design approved for use on the truck;

- Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;
- Failing to adequately train and assist dealers in the dangers associated with the vehicle and tires when used as marketed;
- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;
- Failure to meet or exceed internal corporate guidelines;
- Negligently advertising the vehicle as safe and stable family vehicle;
- Failing to inform the consumer, including the plaintiffs, of the information the defendants knew about rollover risk and specifically the truck, thus depriving plaintiffs of the right to make a conscious and free choice, and also in failing to disclose known problems in foreign countries in an effort to conceal problems that the defendants knew about the truck;
- Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of safe retractors, latch plates, roll sensing, ESC, pretensioners, side air bag and curtain technology, and integrated seating technology;
- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;
- ~~Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;~~
- Negligent failure to warn of aging problems associated with the safety equipment.

Nabholz was generally negligent in failing to maintain the vehicle for itself and for permissive users such as Plaintiff, and breaching its legal duty owed to Decedent. *Nabholz* negligence was a proximate cause of the crash, death and damages. These acts of negligence of ~~all defendants~~ Old GM, Nabholz and Russell combined as a proximate and producing cause of the incident in question and the injuries and damages sustained by Plaintiffs.

15.

~~During all relevant time periods, defendants *GM* had actual and constructive knowledge of the dangers associated with the failure of the truck, and in particular the failure of the combination of vehicle and safety equipment. Despite such knowledge, the defendant GM acted in their own interests, with an "evil mind," in a willful, wanton~~

~~and malicious manner, having reason to know, and consciously disregarding, a substantial risk that their conduct might significantly injure or kill others. The defendant had both objective and subjective knowledge of the dangers and risks associated with their products in the hands of consumers and, as such, should be punished in the form of punitive or exemplary damages.~~

16.

Plaintiffs are seeking monetary damages from the defendants, jointly and severally, as found to be reasonable by the jury after consideration of all evidence. The plaintiffs are seeking recovery for the following types of injuries and damages:

- Conscious pain and suffering in the past and in the future;
- Past medical and funeral expense;
- Past and future mental and emotional anguish;
- Past and future loss of earnings;
- Loss of life and the value of life;
- Loss of society and companionship;
- Punitive or exemplary damages;* *insert: "against all defendants other than New GM"
- For costs incurred herein, including attorneys fees;
- For pre-judgment interest at the maximum rate allowed by law;
- For post-judgment interest at the maximum rate allowed by law;
- For such other and further relief as the Court may deem just and proper.

DATED this 21st day of July, 2015.

/s/ C. TAB TURNER
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Exhibit W

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James A. Noel
Patricia Serna

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

COPY

CONSTANCE HAYNES-TIBBETTS, Individually and as Wrongful Death Personal Representative of the Estate of JON TIBBETTS, Plaintiffs, vs. ARMANDO SAENZ; INTEGRITY AUTOMOTIVE L.L.C.; GENERAL MOTORS, LLC; FORD MOTOR COMPANY; and JOHN DOES 1-3; Defendants.	No. D-202-CV-2015-04918

PLAINTIFF'S COMPLAINT TO RECOVER DAMAGES FOR PERSONAL INJURY AND OTHER DAMAGES PURSUANT TO NEW MEXICO STATUTORY AND COMMON LAW

Plaintiff, CONSTANCE HAYNES-TIBBETTS, Individually and as Wrongful Death Personal Representative of the Estate of JON TIBBETTS, submits the following Complaint pursuant to New Mexico law, stating:

PARTIES

1.

At the time of his death on July 23, 2012, Jon Tibbetts ("Decedent" or "Decedent Jon Tibbetts"), age 59, was a citizen and resident of Bernalillo County, New Mexico. The Decedent was employed full-time as the Fire Chief for Sandoval County, New Mexico.

2.

Plaintiff Constance Hayes-Tibbetts (hereinafter "Plaintiff Connie Tibbetts" or "Plaintiff") is a citizen and resident of Bernalillo, County New Mexico. Plaintiff Connie Tibbetts was the Decedent's spouse and is the duly-appointed Wrongful Death

Personal Representative of Decedent's Estate, which is filed in Bernalillo County, New Mexico.

3.

Defendant Armando Saenz ("Defendant Saenz") is a citizen and resident of Bernalillo County, New Mexico. Defendant Saenz is over the age of majority, not on active duty in any branch of the United States Armed Forces, and is otherwise subject to jurisdiction of the Court.

4.

Defendant Integrity Automotive, L.L.C. d/b/a Integrity Automotive ("Defendant Integrity Automotive"), is a New Mexico for-profit corporation (LLC), with its principal business being the sale of pre-owned automobiles located at 9790 Coors Blvd NW, Albuquerque, New Mexico.

5.

Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company ~~and the successor to GM~~. On July 10, 2009, ~~GM's~~ Old GM's continuing operational assets were transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, ~~GM~~ Old GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. ~~GM~~ Old GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009~~, with a plan to re-emerge as a less debt-burdened organization~~. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in ~~GM~~ New GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from ~~GM~~ Old GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company~~, marking the emergence of a new operation from the "pre-packaged" Chapter~~

~~11 reorganization~~. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. ~~Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as~~ GM-LLC~~, was and~~ is authorized to conduct business in New Mexico, owns property in New Mexico, conducts business in New Mexico and derives significant revenue from its activities in New Mexico, and is therefore subject to be sued in New Mexico courts. Since July 10, 2009, ~~At all times relevant to the complaint,~~ GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles~~, including the defective truck that forms the subject matter of this litigation~~. GM-LLC'S authorized agent for service of process is Corporation Service Company, 123 East Marcy Street, Suite 101, Santa Fe, New Mexico 87501.

6.

Defendant FORD MOTOR COMPANY (hereinafter "*Ford*"), is a Delaware corporation with its principal place of business in Dearborn Michigan. *Ford* is authorized to conduct business in New Mexico; conducts business in New Mexico; and derives substantial economic profits from New Mexico. As such, *Ford* is subject to personal jurisdiction in this state. *Ford* is an American multinational automaker headquartered in Dearborn, Michigan, a suburb of Detroit. It was founded by Henry Ford and incorporated on June 16, 1903. The company sells automobiles and commercial vehicles under the Ford brand and luxury cars under the Lincoln brand. In 2011, *Ford* discontinued the Mercury brand, under which it had marketed entry-level luxury cars in the United States, Canada, Mexico, and the Middle East since 1938. In the past it has also produced heavy trucks, tractors and automotive components. *Ford* owns small stakes in Mazda of Japan and Aston Martin of the

United Kingdom. It is listed on the New York Stock Exchange and is controlled by the Ford family, although they have minority ownership. *Ford* is the second-largest U.S.-based automaker and the fifth-largest in the world based on 2010 vehicle sales. At the end of 2010, *Ford* was the fifth largest automaker in Europe. *Ford* is the eighth-ranked overall American-based company in the 2010 Fortune 500 list, based on global revenues in 2009 of $118.3 billion. In 2008, *Ford* produced 5.532 million automobiles and employed about 213,000 employees at around 90 plants and facilities worldwide. *Ford*'s authorized agent for service of process is CT Corporation System, 123 E. Marcy Street, Ste. 201, Santa Fe, NM 87501.

7.

Defendants John Does 1-3 are unidentified people or corporations who were, or may have been, involved in recommending, installing, selling, distributing, or otherwise participating in the service of the Cadillac SRX, including installation of the inappropriate tire, wheels, and attachments on the Saenz vehicle. The information necessary to specifically identify who those people and entities are is in the unique and exclusive possession of Defendants Integrity and Saenz and therefore not obtainable.

JURISDICTION AND VENUE

8.

This civil action is brought under theories of strict liability, negligence, breach of implied warranty, personal injury, and wrongful death.

9.

This Court has jurisdiction over the subject matter of this action and venue is proper in Bernalillo County because all or part of Plaintiff's cause of action arose in Bernalillo County, Defendants *GM-LLC* and *Ford* do business in Bernalillo County and maintain statutory agents in New Mexico upon which service of process may be had, and Plaintiff Connie Tibbetts and Defendant Armando Saenz are residents of Bernalillo County, State of New Mexico.

GENERAL ALLEGATIONS

10.

The defective 2005 Cadillac SRX (VIN: IGYEE63A950117981) which forms the basis for this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by ~~Defendant *GM-LLC*~~ Old GM. The Cadillac SRX is a luxury mid-size crossover

SUV produced by the Cadillac division of American automaker General Motors since the 2004 model year. The SRX ~~is~~ was manufactured at ~~GM's~~ Old GM's Lansing Grand River Plant in Lansing, Michigan, as well as assembled overseas in Russia and China. It was designed by ~~GM~~ Old GM from the Cadillac and Cadillac STS platform with the designation GMT-265 (Sigma platform). The SUV ~~is~~ was designed with 116" wheelbase; 195" length; 73" width; and 68" height. The vehicle ~~is~~ was equipped with a five or six-speed automatic transmission. Rear-wheel and four-wheel drive and MagneRide are available. The first generation SRX was available through the 2009 model year. The Insurance Institute for Highway Safety ("IIHS") found the 2005-08 SRX worst in its class for driver fatalities with a death rate of 63 compared to its class average of 23. For the 2010 model year, Cadillac introduced an all-new SRX based on the Provoq concept vehicle. The new version used its own unique platform with ties to Epsilon II.

11.

Defendant Integrity Automotive sold the defective 2005 Cadillac to Defendant Armando Saenz just days before the July 23, 2012, fatal collision.

12.

The defective 2004 Ford Explorer (VIN: 1FMZU73K64ZA14385) which forms the basis of this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by *Ford*. The Ford Explorer is a mid-size sport utility vehicle produced by Ford since 1990 (as 91 model year). Until 2010, the Explorer was formed from a traditional body-on-frame, mid-size SUV design. For the 2011 model year, Ford moved the Explorer to a more modern unibody, full-size crossover SUV/crossover utility vehicle platform, the same Volvo-derived platform the Ford Flex and Ford Taurus use. For purposes of marketing, the Explorer is slotted between the traditional body-on-frame, full-size Ford Expedition and the mid-size CUV Ford Edge. The fifth generation Explorer shares platforms with the Ford Flex and Lincoln MKT. The Explorer has been involved in controversy, after a spate of fatal rollover accidents throughout the 1990s and early 2000s, including those involving Explorers fitted with Firestone tires. The 4-door Explorer and its companion the Mercury Mountaineer were redesigned in 2001, and entirely for the 2002 model year, losing all design similarity with the Ford Ranger while also gaining a similar appearance to the Ford Expedition. The 2002-2004 models saw introduction of stability control as an option, Ford's *AdvanceTrac* with *Roll Stability Control* system. The stability control system became standard for the 2005

model year. For the third generation, Ford installed fully independent rear suspension in the 4-door Ford Explorer and Mercury Mountaineer - but not in the smaller Sport model. The suspension replaced the non-independent "live axle" rear suspension used in previous model year Explorers. With a fully independent rear suspension, each rear wheel connects to the rear differential via a half-shaft drive axle. The design was intended to offer increased ride comfort, on-road handling, and vehicle stability. One reason for Ford's switch to independent rear suspension in the Explorer was due to the well-publicized rollover problem associated with the design, including resulting fatalities that occurred with the previous generations of Ford Explorer. The 2006 model year brought about an update with the introduction of a new frame produced by *Magna International* rather than *Tower Automotive.* By 2008, Ford added side curtain airbags across the Explorer range. By 2009, the Explorer received a trailer sway control system as standard equipment, and the navigation system received traffic flow monitoring and a gas information system. By 2011, the fifth generation Explorer evolved to a unibody structure based on the D4 platform, a modified version of the D3 platform. The newer Explorer featured blacked-out A, B, and D-pillars to produce a *floating roof* effect similar to Land Rover's floating roof design used on its sport utility vehicles. The fifth generation Explorer (2011), assembly moved to Ford's Chicago Assembly plant, where it is built alongside the Ford Taurus and Lincoln MKS. The Louisville plant, where the previous generation was built, was converted to produce cars based on Ford's global C platform (potentially including the Ford Focus, Ford C-Max, and Ford Kuga). Much like Ford's Escape, the Explorer continues to be marketed as an "SUV" rather than a "crossover SUV". With the discontinuation of the Ford Crown Victoria in 2011, and to compete with police model sport utility vehicles offered by other automobile manufacturers, Ford made the 2012 model year Explorer the basis for a "new" SUV-type Police vehicle. It is only available to law enforcement and other emergency services agencies. Ford calls it the *Utility Police Interceptor.* Major differences between the standard Explorer and the Utility Police Interceptor included provisions for emergency services related equipment such as radios, light bars and sirens. Ford actively marketed the so-called "special service" version of the Explorer as the industry's "first pursuit-rated, all-wheel-drive (AWD) vehicle" with special features such as "bigger brakes, springs and mpg figures for surer stopping, better stability, and greater fuel efficiency." Ford likewise represented and warranted that the Explorer

special service version had "faster, ultra-tenacious acceleration thanks to higher horsepower combined with standard AWD", as well as "higher electrical capability". Ford further marketed and sold the police package as "hailing from the same platform so they share many common maintenance parts (no matter the powertrain), including tires, wheels, brake pads, rotors, calipers, and alternator." Ford likewise represented that the design was made for "officer protection" in that it was certified for protection, including certified for a 75 mph rear-impact crash, so-called "shields of armor" as panels for ballistics protection, steel intrusion plates built into the seat backs, and a "safety cell" construction designed to direct force of a collision around the occupant compartment ("SPACE" meaning Side Protection and Cabin Enhancement), including the use of an architecture made of hydro formed cross-vehicle beams between the door frames designed to solidify the sides along with ultra-high-strength steel reinforcement for added occupant protection. The vehicle was marketed with Ford's canopy system and front seat side airbags as well.

13.

On July 23, 2012, Defendant Armando Saenz was driving the 2005 Cadillac SRX northbound on U.S. Interstate 25, at a speed at or near the posted speed limit. During the course of Saenz' journey, he negligently lost control of his vehicle, struck a center concrete barrier, and then veered back to the right where he struck the left side of the 2004 Ford Explorer being driven northbound by the Decedent. Following impact, the Decedent attempted to control the Explorer, but due to its defective design, he was unable to and the Explorer rolled over multiple times causing Decedent to suffer serious injury and death.

COUNT I
NEGLIGENCE
DEFENDANT ARMANDO SAENZ

14.

Defendant Armando Saenz owed the duty to exercise due care in the operation of the vehicle he was driving, including maintaining appropriate speed for the conditions, maintaining control of his vehicle, and operating the vehicle in a non-negligent manner.

15.

Defendant Armando Saenz breached his duties by failing to exercise the reasonable care necessary to maintain control of the vehicle and, specifically, the

defective 2005 Cadillac SRX involved in the fatal collision that forms the basis of Plaintiff's Complaint.

16.

Defendant Armando Saenz' negligence was a contributing cause of the injuries, death and damages complained of by Plaintiff herein.

COUNT II
STRICT LIABILITY/PRODUCT LIABILITY
DEFENDANT FORD

17.

At all times relevant to the subject Complaint, *Ford* was responsible for designing, developing, testing, assembling, manufacturing, marketing, and distributing the defective 2004 Ford Explorer. Absent ordinary wear and tear, including foreseeable use, the subject vehicle was in substantially the same condition at the time of the crash as it was when it left *Ford's* possession.

18.

The Explorer is defective and unreasonably dangerous by design when used as marketed by *Ford.* The inherent defects in the design were present at the time the vehicle was manufactured, marketed, and distributed. The defects in the vehicle were a proximate and producing cause of the injuries, death and damages alleged by Plaintiff herein. At all times relevant to the Complaint, *Ford* was in the business of designing, manufacturing, assembling, marketing, testing, and otherwise distributing automobiles. The defective nature of the design of the Explorer included defects in design, stability, handling, marketing, instructions, warning, crashworthiness, rollover resistance and controllability. The defective nature of the vehicle includes the following:

18.01 The Explorer is defective in that the design of the "package", which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of rollover given the uses for which the vehicle was marketed, especially freeway use and special-service use;

18.02 The Explorer is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency turning maneuvers, including while attempting to avoid crashes and dealing with impacts, and does not remain controllable under all operating conditions as required by *Ford* guidelines, including the tendency to over-steer and skate;

18.03 The Explorer is unreasonably dangerous from a stability standpoint because it rolls over instead of sliding when loss of directional control occurs on relatively flat level surfaces during foreseeable steering maneuvers;

18.04 The combination of the above factors creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

18.05 The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable emergency situations and maneuvers that are consistent with *Ford's* efforts to market the vehicle as a "station wagon" replacement for police use, which *Ford* had both actual and constructive knowledge would lead to rollover crashes. *Ford's* knowledge included both actual knowledge based on its test history with SUVs and its research and knowledge of rollovers in foreseeable turning maneuvers and constructive knowledge given its corporate history with respect to SUV designs, and unique and special knowledge of the dangers posed when operated by aggressive special service public servants;

18.06 The vehicle was defectively marketed in that consumers, including public servants, were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying, station-wagon replacement type vehicle when *Ford* knew that this was untrue. In fact, Ford went further by representing that the police package had special or unique qualities that other Explorers did not have that actually enhanced the safety of the vehicles when exposed to emergencies;

18.07 The risk of operating the vehicle as designed outweighed any benefits associated with the design and *Ford* knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries, and knew that rollover crashes were particularly dangerous;

18.08 *Ford* knew that this type vehicle — an SUV — was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds, especially by police officers who oftentimes are presented with dangerous driving situations;

18.09 The Explorer was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system — roof, occupant compartment, safety cell, safety belt system, anti-ejection design, and glazing design — that would effectively provide reasonable protection in the event of a rollover, with or without pre-roll impact. Similarly, the vehicle was designed in such a manner that unique equipment placement in the vehicle posed unique and unreasonable risk of injury to occupants in all forms of crashes. Despite actual knowledge of the unique dangers posed in rollover

crashes, Ford intentionally marketed the Explorer has having special or unique qualities or characteristics that made it safer than other vehicles for public servants;

18.10 Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing, such as pre-tensioners and side airbags or curtains, *Ford* intentionally marketed the vehicle to consumers, including public servants, for use as a freeway, passenger-carrying vehicle, and intentionally led the public to believe that it was safe, stable, and would provide state of the art protection to occupants exposed to extraordinary conditions;

18.11 *Ford* had both actual and constructive knowledge of the existence of safer,

alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

18.12 *Ford* willfully, wantonly, and consciously marketed the Explorer for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.

19.

Ford's engineers have known for over 30 years, from the time of the development of the Bronco II, that the most important vehicle characteristic in maintaining control and reducing SUV propensity for rollover is understeer, especially in transient maneuvers. *FORD* identified understeer as a "first order effect" and the "primary factor influencing rollover propensity."

20.

The problem with an over-steering vehicle, with respect to rollover propensity, is that it can and likely will result in the back end of the vehicle coming around (a loss of control) with the vehicle ending up sideways to its path of travel. The resulting side forces ("lateral acceleration") contribute to rollover.

21.

Ford also recognized that the rollover stability of a vehicle is affected by its "stability index," or "static stability factor", which is the relationship of center of gravity height and the track width of the vehicle. In light of these common control and stability principles, *Ford* adopted a "handling strategy" with respect to the Explorer to "increase understeer in all conditions."

22.

Ford's engineers recommended major safety changes needed for the Explorer to *Ford* management, yet management ignored and vetoed those changes to increase profits on the vehicle. *Ford* engineers recommended, for example, improvements with regards to the Explorer's suspension, reduction in the engine height to lower the center of gravity, and an increase in the track width of the vehicle to make the Explorer more resistant to rollover than the Bronco II and earlier versions of the Explorer.

23.

Ford's knowledge of the critical importance of understeer was not acted upon, however, and *Ford* management rejected the center of gravity and track width recommendations of its engineers that would have made the Explorer more resistant to rollover. *Ford* declined to make the necessary changes so that there would not be any delays in the production of the Explorer, and thus Ford could recoup its $500 million investment as quickly as possible.

24.

Ford addressed the rollover stability problem primarily by recommending lower air pressure in the tires. As set forth in a 1989 development report, after noting that they had investigated variations in tire pressure "as a means to achieving the UN46 (Explorer) ride and handling objective," *Ford's* engineers recommended use of "reductions in tire pressure to meet the program objectives" for both ride and handling. Likewise, since *Ford's* marketing department was recommending larger tires (which reduced the vehicle's stability), *Ford* again put dollars in front of safety and recommended the larger tire, but with reduced air pressure. When it came to creating understeer, *Ford's* engineers again turned to lower tire pressure.

25.

By putting profits and public relations image before safety, *Ford* produced a vehicle -- beginning with the Ford Bronco II and continuing with minor changes -- that was prone to over-steer, going out of control in response to simple accident avoidance maneuvers, and rollover when operated by the ordinary driver.

26.

The Explorer also has dangerously weak roof pillars (which support the roof structure), incapable of maintaining integrity of the safety cell in the event of a

rollover, and thereby leading to the collapse of the roof — towards the passengers' heads — in a rollover crash.

27.

In the subject crash, the defectively weak roof collapsed and directly attributed to the injuries that took Jon Tibbett's life. The Explorer lacked adequate design features in the roof and structure that should have been present given the high propensity for rollover. The vehicle also lacked structural foam, which would also have substantially and feasibly increased the roof strength. *Ford* also failed to equip, as standard equipment, the 2004 Ford Explorer with electronic stability control, a feasible alternative design that would have likely avoided the rollover and injuries in the subject crash.

28.

Ford knew of the propensity of the Ford Explorer to rollover from the mid 1980's when the initial version of the program was approved. *Ford* was aware of the rollover problems of the Jeep CJ5 in the 1970s and 1980s, which were alleviated by simply lowering and widening the design. *Ford* had also experienced similar situations concerning rollover incidents dating back to the Bronco II. It is thus obvious that Ford was aware of the rollover issues concerning the Ford Explorer.

29.

Not only did *Ford's* own testing show that there were unacceptable Explorer rollover problems, but the high number of real world incidents also made *Ford* aware that attention should be directed to this issue. However, *Ford* made no significant attempt to correct the problem despite having the capacity and technology to do so.

30.

A safer alternative design was economically and technologically feasible at the time the product left the control of *Ford*, both with respect to rollover propensity and crash protection.

31.

The defective nature of the vehicle was a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, including his enhanced injuries, and the resulting damages suffered and sought by the Plaintiff herein. *Ford* is strictly liable for supplying the defective and unreasonably dangerous product.

COUNT III
NEGLIGENCE

DEFENDANT *FORD*

32.

At all times relevant to this Complaint, *Ford* was in the business of supplying motor vehicles for use on the public roadways. *Ford* held itself out to the public as having specialized knowledge in the industry. As such, *Ford* owed consumers, including Decedent and Plaintiff, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the Explorer. *Ford* violated this duty by negligently supplying a vehicle that was defective. The negligent acts include but are not limited to the following acts or omissions:

- Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;
- Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;
- Negligently designing and testing the vehicle from an occupant protection standpoint, and then marketing it for special use by public servants knowing full well that the features it represented did not exist in reality;
- Negligently testing of the vehicle from a handling and stability standpoint;
- Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;
- Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;
- Failing to disclose known defects, dangers, and problems to both dealers and the public;
- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;
- Failure to meet or exceed internal corporate guidelines;
- Negligently advertising the vehicle as safe and stable family vehicle and one that was ultra-safe for use by public servants;
- Failing to inform the consumer, including the Plaintiff and Decedent, of the information *Ford* knew about rollover risks, and specifically the Explorer, thus depriving the Plaintiff and Decedent of the right to make a conscious and free choice, and also in failing to disclose known problems in foreign countries in an effort to conceal problems that *Ford* knew about the Explorer from U.S. consumers, including the Plaintiff and Decedent;

- Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of roll sensing, pre-tensioners, side air bag and curtain technology, and integrated seating technology;

- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

- Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;

- Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.

33.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, his enhanced injuries, including his death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT IV
BREACH OF WARRANTY
DEFENDANT FORD

34.

At all times relevant to the complaint, *Ford* was a "merchant" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, Ford breached the warranties of merchantability and fitness for a particular purpose in that the 2004 Explorer was not fit for ordinary use or for the intended use for which it was purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, enhanced injuries, and the resulting damages suffered and sought by the Plaintiff herein. The product was unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

COUNT V
STRICT LIABILITY/PRODUCT LIABILITY
DEFENDANTS *GM-LLC* AND INTEGRITY AUTOMOTIVE

35.

At all times relevant to the present Complaint, ~~GM-LLC~~ Old GM was responsible for designing, developing, testing, assembling, manufacturing, marketing, and

distributing the defective 2005 Cadillac SRX. Absent foreseeable wear, tear, modifications, and usage, the subject vehicle was in substantially the same condition at the time of the crash as it was when it left Old GM's ~~*GM-LLC's*~~ possession.

36.

At all relevant times hereto, Defendant Integrity Automotive was engaged in the business of marketing, distribution, sales and service of motorized vehicles in New Mexico, and held itself out as having special knowledge and expertise. Integrity placed the subject defective vehicle into the stream of commerce in a condition that was defective and unreasonably dangerous, including non-approved, low-profile tires and loose tie rods.

37.

Upon information and belief, and at all material times hereto, Old GM ~~Defendants *GM-LLC*~~ and Integrity Automotive marketed, distributed, sold and/or serviced the subject 2005 Cadillac SRX, and the Cadillac was in substantially the same condition, with respect to its steering mechanism, handling, maneuverability and stability, as it was when it was initially placed in the stream of commerce by Old GM ~~*GM-LLC.*~~

38.

The Cadillac SRX is defective and unreasonably dangerous by design when used as marketed. The inherent defects in the design were present at the time the vehicle was manufactured, marketed, and distributed. The defects in the vehicle were a proximate and producing cause of the injuries, including the severity of the injuries, death and damages alleged by Plaintiff herein. At all times relevant to the Complaint, Old GM ~~*GM-LLC*~~ was in the business of designing, manufacturing, assembling, marketing, testing, and otherwise distributing automobiles. The defective nature of the design of the 2005 Cadillac SRX included defects in design, stability, steering, handling, marketing, instructions, warning, and controllability. The defective nature of the vehicle includes the following:

- The Cadillac SRX is defective from a handling standpoint because it does not remain controllable under all operating conditions as required by ~~*GM-LLC*~~ Old GM guidelines;

- The inability to control the vehicle at all times creates an extreme risk of steering and controllability that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

- Old GM ~~GM-LLC~~ knew that this type vehicle — an SUV — was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds;

- Old GM ~~GM-LLC~~ had both actual and constructive knowledge of the existence of safer, alternative designs from both a steering and controllability standpoint, including roll sensing, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

- Old GM ~~GM-LLC willfully, wantonly, and consciously~~ marketed the Cadillac SRX for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in ~~conscious~~ disregard for the public.

39.

By putting profits and public relations image before safety, Old GM ~~GM-LLC~~ produced a vehicle that was prone to unreasonable steering and controllability, including going out of control in response to simple accident avoidance maneuvers when operated by the ordinary driver in foreseeable circumstances.

40.

Old GM ~~GM-LLC~~ failed to equip, as standard equipment, the 2005 Cadillac SRX with adequate and proper control features that would have likely avoided the uncontrollability of the vehicle which contributed to the collision and injuries in the subject crash.

41.

Not only did Old GM's ~~GM-LLC's~~ own testing show that there were unacceptable Cadillac SRX problems, but the high number of real world incidents also made Old GM's ~~GM-LLC~~ aware that attention should be directed to this issue. However, Old GM's ~~GM-LLC~~ made no significant attempt to correct the problem despite having the capacity and technology to do so.

42.

A safer alternative design was economically and technologically feasible at the time the product left the control of Old GM's ~~GM-LLC~~, both with respect to steering, controllability, and electronic stability control.

43.

The defective nature of the vehicle was a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered

and sought by the Plaintiff herein. Defendants *GM-LLC* and Integrity Automotive are strictly liable for supplying the defective and unreasonably dangerous product.

COUNT VI
NEGLIGENCE
DEFENDANT *GM-LLC*

44.

At all times relevant to this Complaint, Old GM ~~*GM-LLC*~~ was in the business of supplying motor vehicles for use on the public roadways. Old GM ~~*GM-LLC*~~ held itself out to the public as having specialized knowledge in the industry. As such, Old GM ~~*GM-LLC*~~ owed a duty to persons using those vehicles, and persons whom Old GM ~~*GM-LLC*~~ reasonably expected to be in the vicinity during the use of those vehicles, including Decedent Jon Tibbetts, to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the 2005 Cadillac SRX. Old GM ~~*GM-LLC*~~ violated this duty by negligently supplying a vehicle that was defective. The negligent acts* include but are not limited to the following acts or omissions: *insert: of Old GM

- Negligently designing the vehicle from a steering, handling and controllability standpoint given the manner in which it was marketed;
- Negligently designing and testing the vehicle from a steering and controllability standpoint;
- Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;
- Failing to disclose known defects, dangers, and problems to both dealers and the public;
- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;
- Failing to meet or exceed internal corporate guidelines;
- Negligently advertising the vehicle as safe and stable family vehicle;
- Failing to comply with the state of the art in the automotive industry insofar as providing a reasonable electronic stability control system is concerned;
- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to steering, steering linkages, handling and controllability, and/or failing to test appropriately to ensure compliance;

- ~~Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety; and~~

- ~~Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.~~

45.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT VII
NEGLIGENCE
DEFENDANT INTEGRITY AUTOMOTIVE

46.

At all relevant times, Defendant Integrity Automotive owed Decedent and Plaintiff a duty of reasonable care. Defendant Integrity Automotive breached that duty of care and was otherwise negligent for the acts complained of herein. The negligence of Defendant Integrity Automotive combined to cause and/or contribute to Decedent's and Plaintiff's resulting injuries, death, losses and damages as set forth more fully herein. The negligence acts of Defendant Integrity Automotive include, but are not limited to the following:

- Negligently marketing the 2005 Cadillac SRX as a safe and stable passenger vehicle given the uses for which it was marketed;

- Failing to adequately inspect, service and equip the vehicle with safe and required equipment;

- Failing to ensure the vehicle was mechanically in good repair before allowing the vehicle to be sold to customers and used upon the roadways and highways open to the general public;

- Failing to disclose known defects, dangers, and problems regarding the vehicle;

- Failing to remove the 22 inch rims and the 265/35R22 tires that were on the vehicle, and then distributing the vehicle in a condition known to be dangerous;

- Failing to retrofit the vehicle with rims and tires specified by the manufacture to ensure and enhance the vehicle's safety; and

- Failing to advise or warn the vehicle's purchasers that size 22 inch rims and 265/35R22 tires were not specified by GM for use on the Cadillac SRX.

47.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT VIII
BREACH OF WARRANTY
DEFENDANTS *GM-LLC* AND INTEGRITY AUTOMOTIVE

48.

At all times relevant to the complaint, ~~Defendants *GM-LLC*~~ Old GM *and* Integrity Automotive were "merchants" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, ~~these defendants~~ Old GM and Integrity Automotive breached the warranties of merchantability and fitness for a particular purpose in that the 2005 Cadillac SRX was not fit for ordinary use or for the intended use for which it was purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The product was unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

COUNT IX
NEGLIGENCE
JOHN DOES 1-3

49.

At all relevant times, Defendants John Does 1-3 owed Decedent and Plaintiff a duty of reasonable care. Defendant John Does 1-3 breached that duty of care and were otherwise negligent for the acts complained of herein. The negligence of Defendants John Does 1-3 combined to cause and/or contribute to Decedent's and Plaintiff's resulting injuries, death, losses and damages as set forth more fully herein. The negligent acts of Defendants John Does 1-3 include, but are not limited to the following:

- Failing to adequately inspect, service and equip the 2005 Cadillac SRX vehicle with safe and required equipment;

- Failing to install and fit the vehicle with rims and tires specified by the manufacture to ensure and enhance the vehicle's safety;
- Installing inappropriate rims and tires on Defendant Saenz' SRX, including the 22 inch rims and the 265/35R22 tires that were on the vehicle at the time of the collision;
- Failing to ensure the SRX was mechanically in good repair before allowing the vehicle to be used upon the roadways and highways open to the general public; and
- Failing to advise or warn the vehicle's purchasers and users that size 22 inch rims and 265/35R22 tires were not specified by GM for use on the Cadillac SRX.

50.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT X
BREACH OF WARRANTY
DEFENDANTS JOHN DOES 1-3

51.

At all times relevant to the complaint, Defendants John Does 1-3 were "merchants" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, these defendants breached the warranties of merchantability and fitness for a particular purpose in that the inappropriate 22 inch rims and the 265/35R22 tires that were on the 2005 Cadillac SRX were not fit for ordinary use or for the intended use for which they were purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. These products were unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

DAMAGES
INCLUDING LOSS OF CONSORTIUM

52.

The actions and/or inactions of Defendants *Ford*, *GM-LLC*, Integrity Automotive, Armando Saenz, and John Does 1-3, including the aggravating circumstances attending those acts and/or failures to act, caused and/or contributed to Decedent's serious injuries and death, and the resulting damages therefrom include:

* Conscious pain and suffering;
* Mental anguish and distress,
* Medical expenses;
* Disfigurement and death;
* Funeral and burial expenses;
* Property damages;
* Loss of earnings and earning capacity;
* Loss of life and enjoyment of life; and
* Loss of household services; all for which Plaintiff seeks relief pursuant to the New Mexico Wrongful Death Act and other New Mexico law.

53.

Plaintiff Connie Tibbetts enjoyed a very special marital, familial, loving, care-giving and intimate relationship with her husband Jon Tibbetts.

54.

Plaintiff Connie Tibbetts suffered and will continue to suffer from the emotional distress caused by the loss of society, companionship and sexual relations she enjoyed with her husband, Jon Tibbetts, which was wrongfully taken from her as a result of his tragic death.

55.

The actions and/or inactions of ~~Defendants~~ *Ford*, ~~*GM-LLC*~~ Old GM, Integrity Automotive, Armando Saenz, and John Does 1-3, including the aggravating circumstances attending those acts and/or failures to act, caused and/or contributed to Plaintiff's loss of consortium damages, and Plaintiff is entitled to a recovery against each of the Defendants for these damages in an amount to be awarded by the jury herein.

PUNITIVE/EXEMPLARY DAMAGES

56.

In addition to compensatory damages, Plaintiff is seeking punitive damages from Defendants Integrity Automotive, *Ford*, ~~*GM-LLC*~~ and John Does 1-3, because their conduct constitutes reckless, grossly negligent, willful, wanton, malicious

*

behavior that needs to be punished in order to deter others from participating in similar future misconduct. The acts set forth in this complaint were taken with knowledge of the associated risks to consumers. ~~These defendants~~ Integrity Automotive, Ford and John Does 1-3 took the steps set forth herein in conscious disregard for the potential consequences and under circumstances for which a jury could determine that they willfully, wantonly, recklessly, maliciously, and consciously indifferent to the consequences, endangered human life. ~~These defendants~~ Integrity Automotive, Ford and John Does 1-3 deserve to be punished in a civil forum for the malicious misconduct. The amount of punitive damages to be awarded is within the discretion of the jury.

WHEREFORE, PLAINTIFF prays for judgment for compensatory and punitive damages as set forth in this Complaint, pre- and post-judgment interest, costs and fees in connection with this action, and for any and all other just relief this court may deem appropriate.

Dated this 9th day of June, 2015.

Respectfully submitted,

WILL FERGUSON & ASSOCIATES

By: *\/s/ Robert M. Ortiz*
ROBERT M. ORTIZ
1720 Louisiana Blvd NE, Suite 100
Albuquerque, New Mexico 87110
(505) 243-5566
And

TURNER & ASSOCIATES, P.A.
By: TAB TURNER
(*Pro Hac Vice Pending*)
Arkansas Bar No. 85158
4705 Somers Avenue, Suite 100
North Little Rock, Arkansas 72116
(501) 791-2277

ATTORNEYS FOR PLAINTIFFS

Exhibit X

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

--x		
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)**
--x		

ORDER GRANTING MOTION OF GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE BANKRUPTCY COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION AND THE RULINGS IN CONNECTION THEREWITH

VERONICA ALAINE FOX
CLAUDIA LEMUS
TAMMIE CHAPMAN
CONSTANCE HAYNES-TIBBETTS

Upon the Motion, dated June 1, 2016 ("**Motion**"), of General Motors LLC ("**New GM**"),[1] seeking the entry of an order (i) enforcing the Sale Order and Injunction, entered by the Bankruptcy Court on July 5, 2009, and the Bankruptcy Court's rulings in connection therewith, by directing the State Court Plaintiffs to amend their Complaints so that they comply with the Sale Order and Injunction and the other Bankruptcy Court rulings, all as more fully set forth in the Motion; and due and proper notice of the Motion having been provided to counsel for the State Court Plaintiffs, and it appearing that no other or further notice need be given; and a hearing (the "**Hearing**") having been held with respect to the Motion on June 27, 2016; and upon the record of the Hearing, the Court having found and determined that the legal and factual bases

[1] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is therefore:

ORDERED that the Motion is GRANTED as set forth herein; and it is further

ORDERED that the Fox Plaintiff shall file with the Georgia State Court a further amended Complaint ("**Fox Second Amended Complaint**") in the form attached hereto as **Exhibit "1,"** on or before three (3) business days after the entry of this Order, so that the Fox Second Amended Complaint fully complies with the Sale Order and Injunction and the other Bankruptcy Court rulings; and it is further

ORDERED that the Lemus Plaintiff shall file with the New Mexico State Court an amended Complaint ("**Lemus Amended Complaint**") in the form attached hereto as **Exhibit "2,"** on or before three (3) business days after the entry of this Order, so that the Lemus Amended Complaint fully complies with the Sale Order and Injunction and the other Bankruptcy Court rulings; and it is further

Ordered that the Chapman Plaintiff shall file with the Arkansas State Court an amended Complaint ("**Chapman Amended Complaint**") in the form attached hereto as **Exhibit "3,"** on or before three (3) business days after the entry of this Order, so that the Chapman Amended Complaint fully complies with the Sale Order and Injunction and the other Bankruptcy Court rulings; and it is further

ORDERED that the Tibbetts Plaintiff shall file with the New Mexico State Court an amended Complaint ("**Tibbetts Amended Complaint**") in the form attached hereto as **Exhibit "4,"** on or before three (3) business days after the entry of this Order, so that the Tibbetts Amended Complaint fully complies with the Sale Order and Injunction and the other Bankruptcy Court rulings; and it is further

ORDERED that within five (5) business days after the entry of this Order, the State Court Plaintiffs shall file with the Clerk of this Court evidence of the filing of their amended complaints with the applicable state courts; and it is further

ORDERED that this Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: ___________, 2016
New York, New York

____
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

VERONICA ALAINE FOX, *
*
Plaintiff, *
*
v. * CIVIL ACTION FILE
*
* NO. 14A 3468-4
GENERAL MOTORS LLC and *
ATLANTA AUTO BROKERS, INC., *
*
Defendants. *

RECAST & AMENDED COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Veronica Fox and files this Complaint for Damages against Defendants General Motors LLC ("GM LLC") and Atlanta Auto Brokers, Inc. ("AAB"), and respectfully shows the following:

INTRODUCTION

On November 12, 2013, Plaintiff Veronica Fox was rendered quadriplegic in a rollover wreck in the General Motors 2004 SRX she was driving. She was properly restrained in the vehicle. When the SRX rolled over, the top of the roof literally came off the vehicle, and the remaining roof structure buckled and collapsed on top of her. Her injuries were caused by the resulting roof crush that occurred during the rollover. Her injuries were entirely preventable. Her injuries would not have happened had General Motors Corporation ("GM Corp.") designed the 2004 SRX to provide proper protection for the occupants in a foreseeable rollover wreck. ~~They would not have happened if General Motors LLC ("GM LLC") would have warned her of the dangers of the roof design~~.

GM Corp. ~~and GM LLC~~ knew and expected that its vehicles ***would be*** involved in rollovers. GM Corp., like other automakers such as GM LLC, had the resources to design and manufacture automobiles that would provide proper protection to the occupants in a rollover. But GM Corp. designed the 2004 Cadillac SRX with a roof structure that *it knew* would utterly fail to provide such protection: the roof panel was made almost entirely of glass; the roof was secured to the vehicle by nothing but glue, with no welds or other mechanical fasteners; predictably, the entire, glued-on roof came off during the rollover, leaving a gaping hole in the top of the vehicle and depriving the roof system of the support the top of the roof should provide; there was little to no lateral support going across the roof to help support the sides of the vehicle when the roof panel came off during the roll; and the remaining roof structure was so inadequate, it buckled and crushed onto Veronica Fox's head, catastrophically and permanently injuring her. ~~GM LLC knew all these facts. Yet, it chose not to warn Veronica Fox, or anyone else, of the dangerous design of the 2004 SRX.~~

Plaintiff files this action to recover for the injuries caused by GM Corp.'s decision to adopt an unreasonably dangerous roof design, and for ~~GM LLC's and~~ Atlanta Auto Broker Inc.'s ("AAB") election not to warn citizens including Plaintiff Fox of the dangers of the 2004 SRX.

I. PARTIES, JURISDICTION, VENUE, & SERVICE OF PROCESS

1.

Plaintiff Veronica Fox is a citizen and resident of the State of Georgia. Plaintiff is subject to the jurisdiction of this Court.

2.

Defendant GM LLC is a foreign corporation organized and incorporated under the laws of Delaware, with its principal place of business located at 300 Renaissance Center, Detroit,

Michigan 48265. GM LLC, like GM Corp., is engaged in the business of designing, manufacturing, marketing, promoting, advertising, distributing, and selling automobiles, trucks, SUVs, and other types of vehicles in the State of Georgia, throughout the United States, and elsewhere.

3.

GM LLC is subject to the jurisdiction of this Court because it transacts business in this State and maintains a registered agent in this State: CSC of Cobb County, Inc., 192 Anderson Street S.E., Suite 125, Marietta, Georgia 30060. GM LLC may be served with legal process there.

4.

Venue is proper in Cobb County as to Defendant GM LLC under O.C.G.A. § 14-2-510 and GA. CONST. art. VI, § 2, ¶ VI, because Cobb County is where Defendant GM LLC maintains a registered agent.

5.

Defendant AAB is a domestic corporation organized and incorporated under the laws of Georgia, with its principal place of business located at P.O. Box 3262, Alpharetta, Georgia 30023. AAB is engaged in the business of buying, selling, and inspecting used automobiles in the State of Georgia.

6.

Defendant AAB is subject to the jurisdiction of this Court because it is incorporated in this State, it transacts business in this State, and maintains a registered agent in this State: Joe

Milligan, 487 Cobb Parkway, SE, Marietta, Georgia 30060. AAB may be served with legal process there.

7.

Venue is proper in Cobb County as to Defendant AAB under O.C.G.A. § 14-2-510 and GA. CONST. art. VI, § 2, ¶ VI, because Cobb County is where Defendant AAB maintains a registered agent and under GA. CONST. art. 6, § 2, ¶ IV because it is a joint tortfeasor with Defendant GM LLC.

II. OPERATIVE FACTS

8.

On November 12, 2013, at around 2:00 a.m., Veronica Alaine Fox was the restrained driver of a 2004 Cadillac SRX designed, manufactured, and sold by GM Corp. (VIN: 1GYDE63A740113793) ("the subject SRX" or "subject vehicle"). Carl Coward was a restrained passenger in the front right seat. The subject SRX was traveling north on I-285, past the intersection with Martin Luther King Dr.

9.

Plaintiff Veronica Fox was properly seated in the driver's seat, wearing her seat belt.

10.

While traveling down the highway, the SRX left the roadway. The SRX rolled over and came to rest off the shoulder north of Martin Luther King Dr.

11.

GM Corp. manufactured, designed, marketed, and distributed the subject vehicle with a defective roof which was unable to withstand the forces of this foreseeable and survivable event. As the direct and proximate result of the defects in the roof structure of the subject vehicle, the

roof panel came completely off during the wreck and the remaining structure crushed down on Plaintiff Veronica Fox during this incident, rendering her a quadriplegic.

12.

Defendant AAB inspected the vehicle and sold it to Plaintiff shortly before the wreck occurred. Defendant AAB had a duty to warn Veronica Fox of the danger posed by the SRX roof. AAB breached that duty.

13.

The defects and failures of the subject vehicle, combined with the acts and omissions of GM Corp.~~, GM LLC~~, and AAB, caused Veronica Fox's injuries.

14.

As a direct and proximate result of the subject vehicle's defects and failures and the tortious acts and omissions of GM Corp.~~, GM LLC~~, and AAB, Plaintiff Veronica Fox endured, continues to endure, and will endure in the future physical and emotional pain and suffering.

15.

GM Corp. designed, tested, manufactured, marketed, distributed, and sold the subject SRX, thereby placing it into the stream of commerce.

16.

The subject SRX was defective, unreasonably dangerous, and not fit for its ordinary use when manufactured as well as at the time of the subject incident because (a) the design GM Corp. chose for the roof structure did not offer proper protection to occupants in foreseeable crashes; (b) the risks of GM Corp.'s chosen design outweighed the utility of the design; and (c) GM Corp. did not implement safer, feasible, and practicable alternative designs that would have prevented Plaintiff Veronica Fox's injuries.

17.

GM Corp. could have reasonably foreseen and did, in fact, foresee the occurrence of rollovers such as the one described in this Complaint.

18.

But for GM Corp.'s negligent and defective design of the SRX, and the vehicle's failure to offer proper crash protection to occupants in foreseeable wrecks, Veronica Fox would not have been seriously injured in this wreck.

19.

At the time the subject SRX was manufactured and at all times since then, GM Corp. has had actual knowledge from, among other things, its notice of real-world incidents involving its vehicles, its own testing, and the laws of physics, that when a roof lacks sufficient structural crashworthiness, occupants are highly vulnerable to being injured, paralyzed, or killed in a rollover.

20.

Despite its knowledge set forth above, GM Corp. consciously designed the 2004 SRX, and other GM Corp. vehicles equipped with the same or similar performing roofs, so that occupants would be subject to injury from roof crush.

21.

Despite knowing at the time the subject Cadillac SRX was manufactured that safer alternative designs were technologically feasible, economically practicable, and fundamentally safer, GM Corp. wantonly and recklessly chose not to implement any of those alternative designs in the subject SRX and instead chose a design GM Corp. knew would result in preventable injuries and deaths in foreseeable wrecks.

22.

GM Corp.'s reckless and wanton conduct constituted disregard for the life and safety of Veronica Fox, and the lives and safety of the motoring public generally. GM Corp.'s reckless and wanton conduct also manifests a conscious indifference to the foreseeable consequences of that conduct to motorists like Veronica Fox.

23.

In 2009, after GM Corp. filed for Chapter 11 bankruptcy protection, Defendant GM LLC purchased the assets of GM Corp., including GM Corp.'s books and records.

24.

As part of its 2009 purchase of GM Corp., Defendant GM LLC expressly assumed liability for product liability claims (as set forth in the Sale Agreement and rulings by the Bankruptcy Court) against GM Corp. that arose after the bankruptcy sale.

25.

After the bankruptcy sale, Defendant GM LLC employed the engineers who designed the 2004 SRX roof, and GM LLC possessed all relevant knowledge, books, and records regarding the 2004 SRX roof design. In short, GM LLC acquired all knowledge regarding the 2004 SRX's defective roof from GM Corp.

26.

~~Defendant GM LLC could have reasonably foreseen and did, in fact, foresee the occurrence of rollovers such as the one described in this Complaint.~~

27.

~~Since the bankruptcy sale, Defendant GM LLC, like GM Corp., has had actual knowledge from, among other things, the knowledge of its engineers, the records and books it acquired from GM Corp., its notice of real-world incidents involving its and GM Corp.'s~~

vehicles, its and GM Corp.'s testing, GM LLC's decision to substantially strengthen the roof in the 2010 SRX, and the laws of physics, that when a roof lacks sufficient structural crashworthiness, occupants are highly vulnerable to being injured, paralyzed, or killed in a rollover.

28.

Since the bankruptcy sale, Defendant GM LLC, like GM Corp., has had actual knowledge from, among other things, the knowledge of its engineers, the records and books it acquired from GM Corp., its notice of real-world incidents involving its and GM Corp.'s vehicles, its and GM Corp.'s testing, GM LLC's decision to substantially strengthen the roof in the 2010 SRX, and the laws of physics, that the 2004 SRX roof was unreasonably dangerous and defective.

29.

Despite GM LLC's duty to warn and its knowledge of a need to warn the public, Defendant GM LLC failed at the time of the bankruptcy sale—and all times since—to adequately warn the consuming public, and Plaintiff in particular, of the dangers in a reasonably foreseeable wreck presented by the design of the SRX roof.

30.

Despite the knowledge set forth in the paragraphs above, Defendant GM LLC and GM Corp. wantonly and recklessly continued to sell the vehicle to the consuming public and maintained it in the stream of commerce without a warning, recall, or remedy of the vehicle's defects.

31.

~~Defendant GM LLC's and~~ GM Corp.'s reckless and wanton conduct constituted disregard for the life and safety of Veronica Fox, and the lives and safety of the motoring public generally. ~~GM LLC's reckless and wanton conduct also manifests a conscious indifference to the foreseeable consequences of that conduct to motorists like Veronica Fox~~.

32.

But for the tortious conduct of GM Corp. ~~and GM LLC,~~ Plaintiff Veronica Fox would not have been seriously injured in this wreck.

33.

As a direct and proximate result of GM Corp. ~~and GM LLC~~'s tortious conduct, Plaintiff Veronica Fox endured, continues to endure, and will endure in the future physical and emotional pain and suffering.

34.

No person other than Defendant GM LLC and Defendant AAB is liable for the injuries and damages sustained by Veronica Fox.

35.

Plaintiff's injuries and damages were proximately caused by the tortious acts and omissions of GM Corp.~~, GM LLC,~~ and AAB. The tortious acts and omissions of GM Corp.~~, GM LLC,~~ and AAB that caused the personal injuries to Veronica Fox are described more fully and specifically in the paragraphs below.

III. SPECIFIC COUNTS

COUNT ONE

Strict Liability of General Motors LLC

36.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 35 of this Complaint.

37.

GM Corp. is strictly liable to Plaintiff under O.C.G.A. § 51-1-11 and other applicable law because the risks inherent in the design of the roof structure in the 2004 Cadillac SRX outweighed any utility of the chosen design, thereby rendering the vehicle defective, unreasonably dangerous, and not reasonably suited to the use for which it was intended. The defects in the SRX include, but are not limited to, the following:

a. The roof structure in the SRX failed to offer proper protection to occupants like Veronica Fox during foreseeable rollover events;

b. The roof panel was made almost entirely of glass with a narrow rim of fiber glass;

c. The roof panel was attached to the vehicle by nothing but glue;

d. During the rollover, the entire roof panel came completely off the vehicle, leaving a gaping hole in the roof of the vehicle;

e. GM Corp. knew that the glued-on glass roof would not protect occupants in a rollover;

f. Despite this knowledge, GM Corp. did not design the remaining structure to protect occupants in a rollover;

g. GM Corp. designed the 2004 SRX with a strength-to-weight ratio of 1.9, which earned it the lowest possible rating for roof strength by the Insurance Institute for Highway Safety. *See* Exhibit A, IIHS Website, http://www.iihs.org/iihs/ratings/ratings-info/roof-strength-test (last visited May 19, 2016). According to IIHS, a strength-to-weight ratio of 1.9 is not "good," "acceptable," or even "marginal"—it is "**poor**." *Id.*;

h. GM Corp. did not adequately test the performance of the SRX's roof structure to determine whether prospective owners, users, and occupants of the 2004 SRX would be exposed to an unreasonable risk of physical harm during rollover events;

i. GM Corp. knew, or should have known, from the testing that was performed on the SRX and other GM Corp. vehicles with the same or similar roofs, from real world incidents, and from the laws of physics, that the SRX roof would fail, and GM Corp. knew that serious injury to vehicle occupants could result;

j. The SRX does not contain, and is not accompanied by, warnings to prospective owners, users, or occupants, including Plaintiff, either at the time of sale or post-sale, of the unreasonable risk of physical harm associated with the design of the roof structure of the 2004 SRX;

k. The SRX does not contain, and is not accompanied by, adequate warnings to prospective owners, users, or occupants, including Plaintiff, either at the time of sale or post sale, of the unreasonable risk of physical harm associated with the design of the roof structure of the 2004 SRX.

(as set forth in the Sale Agreement and rulings by the Bankruptcy Court).

38.

Defendant GM LLC assumed liability for product liability claims against GM Corp. that arose after the bankruptcy sale. Plaintiff's strict liability claims against GM Corp. are properly asserted against GM LLC.

39.

The defects in the 2004 Cadillac SRX, in concert with the acts and omissions of ~~Defendants GM LLC and~~ AAB, proximately caused Plaintiff's injuries and damages.

40.

Defendants are liable for the injuries and damages Plaintiff suffered.

COUNT TWO

Negligence of General Motors LLC

41.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 40 of this Complaint.

42.

GM Corp. owed a duty to the consuming public in general, and Plaintiff in particular, to exercise reasonable care to design, test, manufacture, inspect, market, and distribute a product free of unreasonable risk of harm to owners, users, and occupants.

43.

At the time GM Corp. manufactured, marketed, distributed, and sold the 2004 SRX, GM Corp. could reasonably have foreseen and did, in fact, foresee the occurrence of rollover events such as the one described in this Complaint.

44.

GM Corp. breached its duty to exercise reasonable care as set forth in the paragraphs above.

45.

In concert with the acts and omissions of Defendant AAB ~~and GM LLC~~, GM Corp.'s negligence proximately caused Plaintiff's injuries and damages.

46.

Defendant GM LLC assumed liability for product liability claims against GM Corp. that arose after the bankruptcy sale (as set forth in the Sale Agreement and rulings by the Bankruptcy Court). Plaintiff's negligence claims against GM Corp. are properly asserted against GM LLC.

47.

Defendants are liable for the injuries and damages suffered by Plaintiff.

~~COUNT THREE~~

~~General Motors LLC's Failure to Warn~~

~~48.~~

~~Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 47 of this Complaint.~~

~~49.~~

~~GM LLC could reasonably have foreseen and did, in fact, foresee the occurrence of rollover events such as the one described in this Complaint.~~

~~50.~~

~~GM LLC owed a duty to the consuming public in general, and to Plaintiff in particular, to warn of the dangers arising from the design of the SRX.~~

51.

GM LLC knew after the bankruptcy sale about the danger of the roof of the 2004 SRX, but chose not to warn the public or Plaintiff about that danger.

52.

In concert with the acts and omissions of Defendant AAB and GM Corp., GM LLC's failure to warn proximately caused Plaintiff's injuries and damages.

53.

Defendants are liable for the injuries and damages Plaintiff suffered.

COUNT FOUR

Punitive Damages

54.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 53 of this Complaint.

55.

GM LLC acted with conscious indifference to the safety and well-being of the public in failing to effectively repair or warn about the dangers of the 2004 SRX. GM LLC knew or should have known of those dangers. GM LLC purchased all GM Corp.'s books and records revealing the defective and dangerous design of the 2004 SRX roof. GM LLC employed the same engineers who designed and knew about the defective and dangerous design of the 2004 SRX roof. Despite knowing of the dangers posed by the 2004 SRX, GM LLC acted wantonly and with conscious indifference to the safety and well-being of the public, as defined by O.C.G.A. § 51-12-5.1, in failing to repair or warn about the dangers of the 2004 SRX.

56.

Defendant GM LLC's own failure to warn, which occurred after the June 2009 bankruptcy sale, was so egregious that it rises to the level of conscious indifference to the safety and well-being of the public under O.C.G.A. § 51-12-5.1. Such misconduct warrants the imposition of punitive damages against GM LLC.

COUNT FIVE

Statute of Repose

57.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 56 of this Complaint.

58.

The willful and wanton misconduct by GM Corp. and GM LLC referenced in this Complaint precludes the application of any statute of repose as a defense. Georgia's statute of repose does not bar claims when the defendant acted with willful and wanton disregard of the dangers of its conduct.

59.

GM LLC's failure to warn of the dangers referenced in this Complaint precludes the application of any statute of repose as a defense. Georgia's statute of repose does not bar claims when the defendant failed to warn of the dangers which were known to or should have been known to the defendant.

COUNT SIX

Atlanta Auto Brokers, Inc.'s Failure to Warn

60.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 59 of this Complaint.

61.

Defendant AAB sold the subject 2004 Cadillac SRX to Plaintiff Veronica Fox on or about September 27, 2013, less than two months before the wreck that is the subject of this Complaint.

62.

AAB is in the business of buying, selling, and inspecting cars. It has been in that business for over 20 years. As a result of this extensive experience, AAB has specialized and superior knowledge about cars, car repair and parts, vehicle safety, and vehicle quality.

63.

Before selling the vehicle to Plaintiff, Defendant AAB undertook to inspect the vehicle for Plaintiff's benefit. It therefore had a duty to conduct its inspection non-negligently.

64.

Plaintiff originally sought to purchase a Chevrolet Suburban at AAB, but AAB's inspection had revealed the Suburban needed repairs. AAB therefore discouraged Plaintiff from purchasing that vehicle. AAB told Plaintiff that the SRX had passed its inspection. AAB therefore encouraged her to choose the SRX instead of the Suburban. Plaintiff relied upon AAB's inspection and its statements about the inspection when she chose to purchase the subject SRX.

65.

AAB also detailed the car before selling it Plaintiff. AAB's inspection and detail of the vehicle either did or should have revealed the dangers of the SRX roof, including but not limited to the fact that the roof was made almost entirely of glass and was attached by nothing but glue. A lay person like Plaintiff would not know that the roof was made of glass because the rear panels of glass were concealed from the inside by the headliner. Plaintiff, in fact, did not know that the roof was made almost entirely of glass until after the wreck occurred.

66.

Defendant AAB encouraged Plaintiff to purchase the SRX because of the sunroof. AAB repeatedly emphasized the sunroof as a selling feature because it extended to the second row of seats. AAB's statements about the sunroof were incomplete and misleading because AAB did not inform Plaintiff that the glass actually extended almost the entire length of the vehicle and because the structure of the roof was itself a deadly design defect.

67.

AAB provided safety warnings to Plaintiff about the use of the sunroof, advising her not to allow passengers to "hang out of the sunroof." AAB's warnings were incomplete and misleading because they suggested that the only danger associated with the roof was the danger of passengers being injured as a result of a decision to "hang out of the sunroof."

68.

Defendant AAB knew or should have known that the SRX roof would not protect occupants in the event of a rollover wreck and therefore had a duty to warn Plaintiff about the dangers created by the SRX roof. AAB's actual or constructive knowledge was a result of its superior knowledge of vehicle parts, quality, and safety, generally—and the SRX's parts, quality,

and safety, specifically; its inspection of the vehicle; and its knowledge about the SRX roof and sunroof.

69.

Defendant AAB knew or reasonably should have known that the SRX roof was dangerous and could result in serious or catastrophic injury or death in foreseeable rollover wrecks.

70.

Plaintiff would not have purchased the SRX had she been informed of and known about the dangers of the roof.

71.

In concert with the acts and omissions of GM Corp. ~~and GM LLC,~~ AAB's failure to warn proximately caused Plaintiff's injuries and damages.

72.

Defendant AAB is liable for the injuries and damages Plaintiff suffered.

DAMAGES & PRAYER FOR RELIEF

73.

Plaintiff incorporates as if re-alleged herein in full paragraphs 1 through 72 of this Complaint.

74.

As a direct result of the defective condition of the 2004 SRX, GM Corp.'s negligence, ~~GM LLC's failure to remedy or give appropriate warnings about the vehicle,~~ and AAB's failure to warn about the vehicle, Plaintiff Veronica Fox has suffered severe and permanent personal injuries, including quadriplegia.

75.

Plaintiff Veronica Fox seeks damages from Defendants in an amount to be determined by the enlightened conscience of the jury and as demonstrated by the evidence, for all elements of compensatory damages allowed by Georgia law. Plaintiff's injuries are permanent, and damages sought include the following:

a. all components of the mental and physical pain and suffering Veronica Fox endured upon impact and up until the present time;

b. all components of the mental and physical pain and suffering Veronica Fox will endure in the future;

c. past and future loss of enjoyment of life; and

d. all past and future economic losses, including medical bills, medical expenses, other necessary expenses for the care and treatment of Veronica Fox, including household services.

~~e. Punitive damages against Defendant GM LLC, pursuant to O.C.G.A. § 51-12-5.1, in an amount to be determined by the enlightened conscience of the jury to be sufficient to punish GM LLC for the harm caused to them and to deter GM LLC from similar misconduct.~~

76.

WHEREFORE, Plaintiff prays for the following relief:

a. That summons issue and service be perfected upon Defendants requiring them to appear before this Court and answer this Complaint for Damages;

b. That judgment be entered against Defendants;

c. That Plaintiff Veronica Fox recovers all elements of compensatory damages, including general and special damages, against Defendants;

d. ~~That Plaintiff Veronica Fox recovers punitive damages against Defendant GM LLC;~~

e. That all costs be cast against Defendants; and

f. That Plaintiff has such other and further relief as this Court deems just and proper.

This 20th day of May, 2016.

Respectfully submitted,

BUTLER WOOTEN & CHEELEY & PEAK LLP

BY:
JAMES E. BUTLER, JR.
Georgia Bar No.099625
TEDRA L. CANNELLA
Georgia Bar No. 881085
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KENNETH S. NUGENT PC

BY:
WILLIAM G. HAMMILL
Georgia Bar No. 943334
Signed with Express Permission by Tedra C. Hobson

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

About our tests

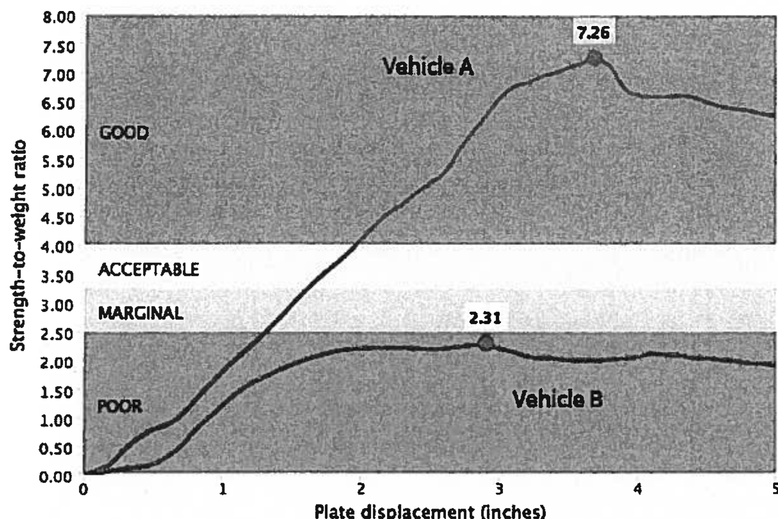
IIHS evaluates a vehicle's crashworthiness with the help of five tests: moderate overlap front, small overlap front, side, roof strength and head restraints & seats. For front crash prevention ratings, the Institute conducts low- and moderate-speed track tests of vehicles with automatic braking systems. IIHS also conducts evaluations of headlight systems and of the child seat attachment hardware known as LATCH. The descriptions below explain how each test is conducted and how the results translate into **ratings**.

Thousands of people are killed each year in rollovers. The best way to prevent these deaths is to keep vehicles from rolling over in the first place. Electronic stability control is significantly reducing rollovers, especially fatal single-vehicle ones. When vehicles do roll, side curtain airbags help protect the people inside, and belt use is essential. However, for these safety technologies to be most effective, the roof must be able to maintain the occupant survival space when it hits the ground during a rollover. Stronger roofs crush less, reducing the risk that people will be injured by contact with the roof itself. Stronger roofs also can prevent occupants, especially those who aren't using safety belts, from being ejected through windows, windshields or doors that have broken or opened because the roof has deformed.

In the test, the strength of the roof is determined by pushing a metal plate against one side of it at a slow but constant speed. The force applied relative to the vehicle's weight is known as the strength-to-weight ratio. This ratio varies as the test progresses. The peak strength-to-weight ratio recorded at any time before the roof is crushed 5 inches is the key measurement of roof strength.

A good rating requires a strength-to-weight ratio of at least 4. In other words, the roof must withstand a force of at least 4 times the vehicle's weight before the plate crushes the roof by 5 inches. For an acceptable rating, the minimum required strength-to-weight ratio is 3.25. For a marginal rating, it is 2.5. Anything lower than that is poor.

The figure below shows sample results for two vehicles — one rated good and one rated poor. Peak force for Vehicle A is 7.26. Since that number is higher than 4, the vehicle is rated good. Peak force for Vehicle B is 2.31. Since that number is lower than 2.5, the vehicle is rated poor.



The following video shows how the roof strength test is conducted. In this test of the 2010 Buick LaCrosse, the peak force is 19,571 pounds for a strength-to-weight ratio of 4.90 and a good rating. The playback speed of this video has been increased. The plate normally crushes at a rate of about 1/8 inch per second.

In every test, the roof is crushed 5 inches. What varies — and can't be seen in a video — is the force used by the machine to achieve that degree of crush. To demonstrate how roof strength can vary and what those differences mean for people inside a vehicle during a rollover, IIHS conducted a demonstration in which two vehicles with different roof strength ratings were subjected to identical force. This video shows what happened when the 2009 Volkswagen Tiguan, rated good for roof strength, and the 2008 Kia Sportage, rated poor, were each subjected to a crush force of 15,000 pounds.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record with a copy of the foregoing pleading by depositing it in the United States Mail with adequate postage affixed thereon and addressed as follows:

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136 North Fairground Street, N.E.
Marietta, GA 30060-1533

This 20th day of May, 2016.

BUTLER WOOTEN CHEELEY & PEAK LLP

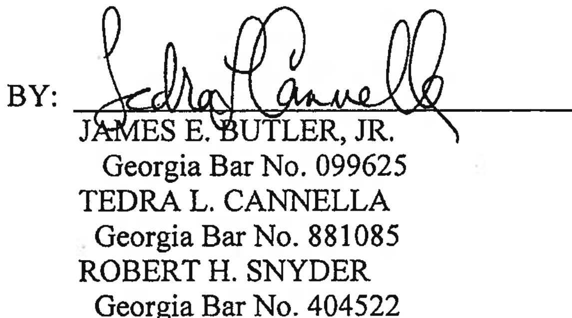
BY: 
JAMES E. BUTLER, JR.
Georgia Bar No. 099625
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Exhibit 2

FILED IN MY OFFICE
DISTRICT COURT CLERK
12/30/2013 11:14:36 AM
STEPHEN T. PACHECO
byh

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

THE WRONGFUL DEATH ESTATE
OF CLAUDIA LEMUS, Deceased,
by and through, DAVID P. GARCIA,
as Personal Representative,

Plaintiff,

v. **No.** D-101-CV-2013-03270

GENERAL MOTORS, LLC and
PERFORMANCE CHEVROLET, PERFORMANCE BUICK GMC,
and HI-COUNTRY CHEVROLET, INC.

Defendants.

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff, by and through her counsel, Carter & Valle Law Firm, P.C., (Richard J. Valle), Emeterio L. Rudolfo, and TURNER & ASSOCIATES, P.A. (*pro hac vice pending*) and bring the following action against Defendants pursuant to applicable New Mexico law:

PARTIES

1. Plaintiff David P. Garcia is an appropriate person to serve as personal representative for purposes of presenting the Estate's claims herein. Mr. Garcia is a practicing attorney licensed in the State of New Mexico located in Santa Fe, New Mexico.

2. Plaintiff requests that the Court appoint David P. Garcia as the wrongful death Personal Representative as provided under New Mexico law.

3. Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company ~~and the successor to GM~~. On July 10, 2009, Old GM's ~~GM's~~ continuing operational assets were

transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, Old GM ~~GM~~ filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. Old GM ~~GM~~ filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009~~, with a plan to re-emerge as a less debt-burdened organization~~. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in New GM ~~GM.~~ The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from Old GM ~~GM~~. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company~~, marking the emergence of a new operation from the "pre-packaged" Chapter 11 reorganization~~. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted

responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. ~~Prior to June 1, 2009,~~ ~~General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as~~ GM-LLC~~, was and~~ is authorized to conduct business in New Mexico, owns property in New Mexico, conducts business in New Mexico and derives significant revenue from its activities in New Mexico, and is therefore subject to be sued in New Mexico courts. ~~At all times relevant to the complaint,~~ Since July 10, 2009, GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles~~, including the defective truck that forms the subject matter of this litigation~~. The GM agent for service of process resides in New Mexico.

4. Defendant PERFORMANCE CHEVROLET is a New Mexico corporation that sold the vehicle at issue. Defendants PERFORMANCE BUICK GMC, and HI-COUNTRY CHEVROLET, INC. are on information and belief the successors in interest to PERFORMANCE CHEVROLET and are collectively referred to as "Dealer" or "Dealers."

JURISDICTION AND VENUE

5. All of the material acts and/or omissions complained of herein occurred in San Juan County, State of New Mexico.

6. This Court has original jurisdiction over Plaintiff's claims pursuant to NMSA 1978 § 41-4-18.

7. Venue is properly laid in this district pursuant to NMSA 1978 § 38-3-1(F) and § 41-4-18(B).

FACTS COMMON TO ALL CAUSES OF ACTION

8. At approximately 9:55 p.m. on February 20, 2013, decedent Lemus was driving her 2008 GMC pickup on Highway 550 at a safe and reasonable speed given the surrounding conditions.

9. As decedent Lemus approached mile marker 115, undetectable icy conditions on the roadway caused the vehicle to begin to skid. The vehicle crossed over the center median and into other traffic lanes before rolling over and coming to rest on its roof.

10. As the vehicle rolled, and despite wearing her safety belt at all times, decedent Lemus died as a result of fatal injuries caused and/or enhanced by the crash.

11. Decedent Lemus endured intense physical pain and suffering, emotional distress and fear during the course of the incident described above until her death.

12. The defective vehicle which forms the basis for this suit is a 2008 GMC truck designed, tested, manufactured, assembled, and/or distributed by Old GM ~~GM-LLC.~~

COUNT I
STRICT LIABILITY

13. Plaintiff incorporates all prior allegations as if fully set forth herein.

14. The subject pickup truck is defective and unreasonably dangerous by design when used as marketed by Old GM ~~GM-LLC~~. The inherent defects in the design were present at the time the vehicle was manufactured and distributed. The defects in the vehicle were a proximate and producing cause of the enhanced injuries, death and damages. At all times relevant to the Complaint, Old GM ~~GM-LLC~~ was in the business of designing, manufacturing or otherwise distributing automobiles. The defective nature of the design of the truck included defects in design; stability;

handling; marketing; instructions; warning; crashworthiness; rollover resistance and controllability. The defective nature of the vehicle includes the following

A. The truck is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency situations, both alone and in towing combinations, and does not remain controllable under all operating conditions as required by ~~GM-LLC~~ Old GM guidelines, including the tendency to oversteer and skate;

B. The combination of the conditions described in subparagraphs (a) through (b) above creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

*replace: Old GM

C. The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable emergency situations, including towing situations, and maneuvers, which ~~GM-LLC~~* had both actual and constructive knowledge would lead to rollover crashes. ~~GM-LLC~~*'s knowledge included both actual knowledge based on its test history with SUVs; its research and knowledge of rollover in foreseeable turning maneuvers; and given its corporate history with respect to truck-type product designs;

*replace: Old GM

D. The risk of operating the vehicle as designed outweighed any benefits associated with the design and ~~GM-LLC~~* knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries; and knew that rollover crashes were particularly dangerous;

E. ~~GM-LLC~~ Old GM knew that this type vehicle was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds, including while towing;

*replace: Old GM

F. The truck was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system – roof, safety belt system, and glazing design – that would effectively provide reasonable protection in the event of a rollover. ~~GM-LLC~~* knew that the belt system would not effectively and reasonably restrain occupants involved in freeway-speed rollovers and ~~GM-LLC~~* knew of the risk that the roof was not sufficiently strong to provide a safety cage for the occupants, and that countermeasures for rollover resistance and rollover occupants protection were both technologically and economically feasible at the time of manufacture, and that these features (roll stability control; ESC; pretensioning; safety canopies and integrated belts) were necessary and reasonable features to protect occupants, keep them inside the safety zone, and keep the safety zone from collapsing. Despite knowledge of these risks, and the availability of alternative safer designs,

Old GM ~~GM-LLC~~ intentionally marketed the vehicle to consumers for use as a freeway, passenger-carrying vehicle, and intentionally led consumers to believe that it was safe, stable, and would provide state of the art protection to occupants in rollovers despite clear knowledge that key safety technology was not incorporated into the product;

G. Old GM ~~GM-LLC~~ knew that the vehicle was not sufficiently equipped with restraints (including buckles) that were designed to perform safely in rollovers, despite the fact that GMC marketed the vehicle for freeway use while towing;

H. Old GM ~~GM-LLC~~ had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, and that the alternatives were technologically feasible and available;

I. Old GM ~~GM-LLC~~ ~~willfully~~, ~~wantonly~~, ~~and consciously~~ marketed the truck for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.

15. The defective nature of the vehicle was a proximate and producing cause of the accident, injuries, death of decedent Lemus and damages suffered by the Plaintiffs. GM-LLC is therefore strictly liable for supplying a defective and unreasonably dangerous product that resulted in personal injury, death and property damage.

16. A safer alternative design was economically and technologically feasible at the time the product left the control of Old GM ~~GM-LLC~~, both with respect to handling and rollover propensity and crash protection.

17. Dealers are liable as provided under New Mexico Law for their distribution of the defective vehicle.

COUNT II
NEGLIGENCE (GM-LLC)

18. Plaintiff incorporates all prior allegations as if fully set forth herein.

19. At all times relevant to this Complaint, Old GM ~~GM-LLC~~ was in the business of supplying motor vehicles for use on the public roadways. Old GM ~~GM-LLC~~ held themselves out to

the public as having specialized knowledge in the industry, especially with respect to truck products with towing capability. As such, Old GM ~~GM-LLC~~ owed consumers, including the Plaintiff, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the truck. Old GM ~~GM-LLC~~ violated this duty by negligently supplying a vehicle that was defective and not reasonably safe for the uses for which it was marketed. The negligent acts* [*insert: "of Old GM"] include but are not limited to the following acts or omissions:

a. Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;

b. Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;

c. Negligently designing and testing the vehicle from an occupant protection standpoint;

d. Negligently testing of the vehicle from a handling and stability standpoint when towing;

e. Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover, and to ensure that towing capability was reasonably safe;

f. Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;

g. Failing to disclose known defects, dangers, and problems to both dealers and the public;

h. Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;

i. Failure to meet or exceed internal corporate guidelines;

j. Negligently advertising the vehicle as safe and stable towing vehicle;

k. Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of roll sensing, pretensioners, side air bags (canopies) and curtain technology, including ejection reduction, and integrated seating technology;

l. Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

m. ~~Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;~~

n. ~~Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.~~

20. These acts of negligence were a proximate and producing cause of the accident, injuries, death and damages suffered by the Plaintiff. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT III
BREACH OF WARRANTY

21. Plaintiff incorporates all prior allegations as if fully set forth herein.

22. At all times relevant to the complaint, ~~Defendant GM-LLC~~ Old GM was a "merchant" in the business of supplying "goods". The truck was a "good" and/or "product" sold for consumer usage under applicable New Mexico law.

23. Prior to the sale of the truck, and release of the truck into the marketplace, ~~GM-LLC~~ Old GM had reason to know the purpose for which Lemus specifically - and as a general consumer of the products which were designed, manufactured, and marketed by ~~GM-LLC~~ Old GM, individually and/or in tandem - bought the truck.

24. ~~GM-LLC~~ Old GM had reason to know that decedent Lemus was relying on GM-LLC's skill or judgment to design, manufacture, market, and select goods suitable for the purpose for which they were sold.

25. Decedent Lemus relied on ~~GM-LLC~~ Old GM to design, manufacture, market, and select the appropriate goods.

26. As such, Old GM ~~GM-LLC~~ breached the warranties of merchantability and fitness for a particular purpose in that the truck in question was not fit for ordinary use or for the intended use for which it was purchased.

27. Old GM's ~~GM-LLC's~~ warranties extended to Plaintiff.

28. These breaches of warranty proximately resulted in the accident, injuries, death and damages suffered by the Plaintiff.

29. Notice has been provided as required by law.

DAMAGES

30. Plaintiff incorporates all prior allegations as if fully set forth herein.

31. As a direct and proximate result of negligence of the Defendants as set forth herein, Plaintiffs incurred and seek the following general and special damages, including damages for wrongful death:

A. Wrongful death damages for the Estate of decedent Lemus;
B. Pain and suffering and emotional distress, past and future;
C. Funeral and burial expenses;
D. Reasonable and necessary medical and non-medical care, treatment and services;
E. The nature, extent, and duration of Plaintiffs' injuries;
F. Loss of guidance and counseling for the minor children who have survived the death of their mother;
G. Physical impairment;
H. The aggravating circumstances attending the wrongful acts and omissions of the Defendant;
I. Any appropriate punitive damages* . *insert: ", as against Defendants other than New GM,"

32. ~~As discussed in the aforementioned paragraphs, and pursuant to UJI 13-1827 on punitive damages, the conduct of Defendant GM-LLC was willful, reckless, and/or wanton and gives rise to punitive damages as outlined above.~~

WHEREFORE, Plaintiff requests the following relief:

a. Awards of general and special compensatory damages as set forth above;

b. Their costs of action herein;

c. Interest as allowed by law;

*insert: ", as against Defendants other than New GM."

d. Any appropriate punitive damages*; and,

e. Such other and further relief as the Court may deem appropriate under the circumstances.

Respectfully submitted,

CARTER & VALLE LAW FIRM, P.C.

/s/ Richard J. Valle
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&

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(501) 791-2277

Attorneys for Plaintiff

Exhibit 3

ELECTRONICALLY FILED
2015-Jul-21 15:23:55
60CV-15-3292
C06D17 : 9 Pages

CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

TAMMIE CHAPMAN, Personal Representative of the Estate of AUBREY CHAPMAN, Deceased, Plaintiff, vs. GENERAL MOTORS, LLC; NABHOLZ, INC.; RUSSELL CHEVROLET COMPANY Defendants.	**Civil Action:** ___________

ORIGINAL COMPLAINT

Plaintiff, TAMMIE CHAPMAN, Personal Representative of the Estate of AUBREY CHAPMAN, Deceased, submits the following Complaint against Defendants, stating:

1.

This is a products liability, negligence, and wrongful death action brought pursuant to Arkansas law. The single vehicle rollover crash that forms the subject of this litigation occurred on July 26, 2012, while the Decedent was traveling through Colorado. The subject vehicle, including the safety system, was placed into the chain of commerce, distributed, and maintained in Pulaski County, Arkansas.

2.

Plaintiff TAMMIE CHAPMAN is a citizen and resident of Hot Spring County, Arkansas, and the former spouse of the Decedent. She is the duly-appointed Administratrix and Personal Representative of the Estate of AUBREY CHAPMAN, Deceased. AUBREY CHAPMAN was a citizen and resident of Hot Spring County, Arkansas at the time of his death with his residence in Bismarck, Arkansas.

3.

Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company ~~and the successor to GM.~~ On July 10, 2009, ~~GM's~~ Old GM's continuing operational assets were transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, ~~GM~~ Old GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. ~~GM~~ Old GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009~~, with a plan to re-emerge as a less debt-burdened organization~~. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in ~~GM~~ New GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from ~~GM~~ Old GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company~~, marking the emergence of a new operation from the "pre-packaged" Chapter 11 reorganization~~. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. ~~Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as~~ GM-LLC~~, was and~~ is authorized to conduct business in Arkansas, owns property in Arkansas, conducts business in

Arkansas and derives significant revenue from its activities in Arkansas, and is therefore subject to be sued in Arkansas courts. At all times relevant to the complaint, GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles~~, including the defective truck that forms the subject matter of this litigation~~. GM conducts business in Arkansas and is subject to jurisdiction in Arkansas. GM may be served with process through its registered agent, Corporation Service Company, 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock, Arkansas, 72201.

4.

Since July 10, 2009, GM-LLC ~~At all times relevant to the subject complaint, *GM*~~ was in the business of designing, developing, testing, assembling, manufacturing, marketing, and distributing automobiles~~, including the subject 2004 model Silverado C1500 pickup truck, worldwide~~.

5.

Defendant NABHOLZ, INC. (hereinafter "*Nabholz*") is an Arkansas for profit corporation whose business address includes offices at 3000 W. 68th Street, Little Rock, Arkansas. *NABHOLZ* was authorized to conduct business in Arkansas, conducted business in Arkansas, had agents in Arkansas, and derived economic profit from Arkansas. As such, *NABHOLZ* is subject to personal jurisdiction in Arkansas and may be served with process through its agent, Greg Williams, 612 Garland, Conway, Arkansas 72032.

6.

RUSSELL CHEVROLET COMPANY (hereinafter *Russell*) is an Arkansas corporation whose primary business is located at 6100 Landers Road, North Little Rock, Pulaski County, Arkansas. *Russell* is an authorized GM dealership, providing inventory of new and used cars and SUVs for the consuming public. *Russell* placed the vehicle in question into the stream of commerce in a defective and unreasonably dangerous condition and provided service and maintenance. *Russell* may be served with process through its registered agent, Bob Russell at 6100 Landers Road, Sherwood, Arkansas, 72120.

7.

JURISDICTION AND VENUE

Venue is appropriate in Pulaski County, Arkansas, because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, and the county of defendant's residence. The amount in controversy exceeds the jurisdictional limits of the court.

8.

FACTUAL BACKGROUND

This is a products liability, negligence, and wrongful death action brought pursuant to Arkansas law. The single vehicle rollover crash that forms the subject of this litigation occurred on July 26, 2012, while the Decedent was traveling through Colorado. The subject vehicle, including the safety system, was placed into the chain of commerce, distributed, and maintained in Pulaski County, Arkansas. At all times relevant to the Complaint, ~~Defendants~~ Old GM, Nabholz, and Russell were in the business of designing, developing, assembling, testing, manufacturing, and distributing vehicles and tires for use by consumers.

9.

The 2004 model ~~GM~~ Old GM pickup was designed, manufactured, marketed, distributed and sold by ~~*GM*~~ Old GM *and Russell*. The truck was designed and marketed for use on the freeways as a safe and stable passenger-carrying vehicle.

10.

The ~~GM~~ Old GM truck was equipped with a safety belt system that was designed, tested, manufactured and distributed, individually and jointly, by ~~*GM*~~ Old GM and suppliers. ~~*GM*~~ Old GM created all design and performance specifications, including the choice of restraints and safety systems to be designed into the vehicle. At all times relevant to the complaint, the restraint system, including the buckle, were defective and unreasonably dangerous.

11.

COUNT I
(Strict Liability/Products Liability – Design Defect)
GM-RUSSELL

At all times relevant to the complaint, ~~the defendants~~ Old GM and Russell were in the business (for profit) of designing, manufacturing, assembling, marketing, and distributing automobiles and auto components, including tires and safety belt systems. The products in question – the ~~GM~~ Old GM truck, and the occupant safety equipment (belt-roof-glazing), all contained design defects at the time the product was manufactured, all of

which combined to cause, proximately cause, and result in the producing cause of the damage, injuries, enhanced injuries, and damages alleged herein. The referenced design defects in the products are and were conditions of the products that rendered the products unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in use. At all times relevant to the Complaint, "safer alternative designs" existed, other than the ones actually used for the vehicle and tire, that in reasonable probability would have prevented or significantly reduced the risk of the occurrence or injury in question without substantially impairing the product's utility; and were economically and technologically feasible at the time the products left the control of ~~the defendants~~ Old GM and Russell by the application of existing or reasonably achievable scientific knowledge.

12.

The defective nature of the design of the truck included defects in design, stability, handling, marketing, instructions, warning, crashworthiness, rollover resistance and controllability, including the tendency to skate. The defective nature of the vehicle includes the following:

- The truck is defective in that the design of the "package," which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of loss of control and rollover given the uses for which the vehicle was marketed;

- The truck is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency turning maneuvers and does not remain controllable under all operating conditions as required by ~~GM~~ Old GM guidelines, including the tendency to overseer and skate in foreseeable turning maneuvers;

- The truck is unreasonably dangerous from a stability standpoint because it rolls over instead of slides when loss of control does occur on relatively flat level surfaces during foreseeable steering maneuvers;

- The truck is defective from a handling standpoint because it has an unreasonable tendency to get oversteer, skate and get sideways in emergency situations, and does not remain controllable under all operating conditions as required by ~~GM~~ Old GM guidelines;

- The combination of the foregoing creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

*replace: "Old GM's" or "Old GM" where applicable

- The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable turning maneuvers that are consistent with ~~GM's~~* effort to market the vehicle as a passenger-carrying vehicle at freeway speeds, which ~~GM~~ had both actual and constructive knowledge would lead to rollover crashes. ~~GM's~~* knowledge included both actual knowledge based on its test history with trucks and SUVs; its research and knowledge of rollover in foreseeable turning maneuvers;

- The vehicle was defectively marketed in that consumers were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying vehicle when ~~defendants~~ Old GM and Russell knew that this was untrue;

- The risk of operating the vehicle as designed outweighed any benefits associated with the design and ~~the defendants~~* knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries; and knew that rollover crashes were particularly dangerous; *insert: Old GM and Russell

- ~~The defendants~~* knew that this type vehicle—a light truck —was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds; *insert: Old GM and Russell

*replace: "Old GM"

- The truck was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system—roof, safety belt system, and glazing design—that would effectively provide reasonable protection in the event of a rollover. ~~GM~~* knew that the belt system would not effectively and reasonably restrain occupants involved in freeway-speed rollovers, including actual knowledge learned from suppliers in the industry as early as 1996, and ~~GM~~* knew of the risk that the roof was not sufficiently strong to provide a safety cage for the occupants. Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing—such as pretensioners and side airbags or curtains—~~GM~~* intentionally marketed the vehicle to consumers for use as a freeway, passenger-carrying vehicle, and intentionally led consumers to believe that it was safe, stable, and would provide state of the art protection to occupants;

- Old GM and Russell ~~The defendants~~ had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

- Old GM and Russell ~~The defendants willfully, wantonly, and consciously~~ marketed the truck for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public, including information about vehicle failures worldwide;

- Old GM ~~GM~~ failed to act appropriately to take reasonable steps to protect occupants in the event of a rollover. ~~GM's~~* ~~conscious~~ disregard for known facts surrounding available technology and the performance of the truck constitutes malicious conduct under applicable law. *insert: Old GM

13.

The defective nature of the truck was a proximate and producing cause of the crash and injuries and damages suffered by Plaintiffs. The products were in the substantially the same condition on the date of the crash as they were at the time of manufacture. The Defendants are therefore strictly liable for supplying a defective and unreasonably dangerous product(s) that resulted in plaintiffs' personal injury and property damage.

14.

COUNT II
NEGLIGENCE

At all times relevant to the Complaint, defendant Old GM ~~GM~~ was in the business of supplying motor vehicles, components, and safety equipment for use on the public roadways in Arkansas. Old GM, Nabholz and Russell ~~The defendant~~ held themselves out to the public as having specialized knowledge in the industry, especially with respect to trucks, SUVs and safety components. As such, Old GM, Nabholz and Russell ~~the defendant~~, individually and jointly, owed consumers, including the plaintiffs, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the truck and safety equipment. Old GM, Nabholz and Russell ~~The defendant~~ violated this duty by negligently supplying a vehicle that were defective, unreasonably dangerous, and knowingly harmful to consumers when used as marketed. The negligent acts* include but are not limited to the following acts or omissions: *insert: of Old GM, Nabholz and/or Russell

- Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;
- Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;
- Negligently designing and testing the vehicle so as to assure its controllability;
- Negligently testing of the vehicle from a handling and stability standpoint, including negligent failure to appropriately test and evaluate the design approved for use on the truck;

- Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;

- Failing to adequately train and assist dealers in the dangers associated with the vehicle and tires when used as marketed;

- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;

- Failure to meet or exceed internal corporate guidelines;

- Negligently advertising the vehicle as safe and stable family vehicle;

- Failing to inform the consumer, including the plaintiffs, of the information the defendants knew about rollover risk and specifically the truck, thus depriving plaintiffs of the right to make a conscious and free choice, and also in failing to disclose known problems in foreign countries in an effort to conceal problems that the defendants knew about the truck;

- Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of safe retractors, latch plates, roll sensing, ESC, pretensioners, side air bag and curtain technology, and integrated seating technology;

- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

- ~~Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;~~

- Negligent failure to warn of aging problems associated with the safety equipment.

Nabholz was generally negligent in failing to maintain the vehicle for itself and for permissive users such as Plaintiff, and breaching its legal duty owed to Decedent. *Nabholz* negligence was a proximate cause of the crash, death and damages. These acts of negligence of ~~all defendants~~ Old GM, Nabholz and Russell combined as a proximate and producing cause of the incident in question and the injuries and damages sustained by Plaintiffs.

15.

~~During all relevant time periods, defendants *GM* had actual and constructive knowledge of the dangers associated with the failure of the truck, and in particular the failure of the combination of vehicle and safety equipment. Despite such knowledge, the defendant GM acted in their own interests, with an "evil mind," in a willful, wanton~~

~~and malicious manner, having reason to know, and consciously disregarding, a substantial risk that their conduct might significantly injure or kill others. The defendant had both objective and subjective knowledge of the dangers and risks associated with their products in the hands of consumers and, as such, should be punished in the form of punitive or exemplary damages.~~

16.

Plaintiffs are seeking monetary damages from the defendants, jointly and severally, as found to be reasonable by the jury after consideration of all evidence. The plaintiffs are seeking recovery for the following types of injuries and damages:

- Conscious pain and suffering in the past and in the future;
- Past medical and funeral expense;
- Past and future mental and emotional anguish;
- Past and future loss of earnings;
- Loss of life and the value of life;
- Loss of society and companionship;
- Punitive or exemplary damages;* *insert: "against all defendants other than New GM"
- For costs incurred herein, including attorneys fees;
- For pre-judgment interest at the maximum rate allowed by law;
- For post-judgment interest at the maximum rate allowed by law;
- For such other and further relief as the Court may deem just and proper.

DATED this 21st day of July, 2015.

/s/ C. TAB TURNER
Tab Turner
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Attorneys for the Plaintiff

Exhibit 4

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James A. Noel
Patricia Serna

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

COPY

CONSTANCE HAYNES-TIBBETTS, Individually and as Wrongful Death Personal Representative of the Estate of JON TIBBETTS, Plaintiffs, vs. ARMANDO SAENZ; INTEGRITY AUTOMOTIVE L.L.C.; GENERAL MOTORS, LLC; FORD MOTOR COMPANY; and JOHN DOES 1-3; Defendants.	No. D-202-CV-2015-04918

PLAINTIFF'S COMPLAINT TO RECOVER DAMAGES FOR PERSONAL INJURY AND OTHER DAMAGES PURSUANT TO NEW MEXICO STATUTORY AND COMMON LAW

Plaintiff, CONSTANCE HAYNES-TIBBETTS, Individually and as Wrongful Death Personal Representative of the Estate of JON TIBBETTS, submits the following Complaint pursuant to New Mexico law, stating:

PARTIES

1.

At the time of his death on July 23, 2012, Jon Tibbetts ("Decedent" or "Decedent Jon Tibbetts"), age 59, was a citizen and resident of Bernalillo County, New Mexico. The Decedent was employed full-time as the Fire Chief for Sandoval County, New Mexico.

2.

Plaintiff Constance Hayes-Tibbetts (hereinafter "Plaintiff Connie Tibbetts" or "Plaintiff") is a citizen and resident of Bernalillo, County New Mexico. Plaintiff Connie Tibbetts was the Decedent's spouse and is the duly-appointed Wrongful Death

Personal Representative of Decedent's Estate, which is filed in Bernalillo County, New Mexico.

3.

Defendant Armando Saenz ("Defendant Saenz") is a citizen and resident of Bernalillo County, New Mexico. Defendant Saenz is over the age of majority, not on active duty in any branch of the United States Armed Forces, and is otherwise subject to jurisdiction of the Court.

4.

Defendant Integrity Automotive, L.L.C. d/b/a Integrity Automotive ("Defendant Integrity Automotive"), is a New Mexico for-profit corporation (LLC), with its principal business being the sale of pre-owned automobiles located at 9790 Coors Blvd NW, Albuquerque, New Mexico.

5.

Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company ~~and the successor to GM.~~ On July 10, 2009, Old GM's ~~GM's~~ continuing operational assets were transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, ~~GM~~ Old GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. ~~GM~~ Old GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009~~, with a plan to re-emerge as a less debt-burdened organization~~. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in ~~GM.~~ New GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from ~~GM.~~ Old GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company~~, marking the emergence of a new operation from the "pre-packaged" Chapter~~

~~11 reorganization~~. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. ~~Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company "MLC"), and now known as~~ GM-LLC~~, was and~~ is authorized to conduct business in New Mexico, owns property in New Mexico, conducts business in New Mexico and derives significant revenue from its activities in New Mexico, and is therefore subject to be sued in New Mexico courts. Since July 10, 2009, ~~At all times relevant to the complaint,~~ GM-LLC was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles~~, including the defective truck that forms the subject matter of this litigation~~. GM-LLC'S authorized agent for service of process is Corporation Service Company, 123 East Marcy Street, Suite 101, Santa Fe, New Mexico 87501.

6.

Defendant FORD MOTOR COMPANY (hereinafter "*Ford*"), is a Delaware corporation with its principal place of business in Dearborn Michigan. *Ford* is authorized to conduct business in New Mexico; conducts business in New Mexico; and derives substantial economic profits from New Mexico. As such, *Ford* is subject to personal jurisdiction in this state. *Ford* is an American multinational automaker headquartered in Dearborn, Michigan, a suburb of Detroit. It was founded by Henry Ford and incorporated on June 16, 1903. The company sells automobiles and commercial vehicles under the Ford brand and luxury cars under the Lincoln brand. In 2011, *Ford* discontinued the Mercury brand, under which it had marketed entry-level luxury cars in the United States, Canada, Mexico, and the Middle East since 1938. In the past it has also produced heavy trucks, tractors and automotive components. *Ford* owns small stakes in Mazda of Japan and Aston Martin of the

United Kingdom. It is listed on the New York Stock Exchange and is controlled by the Ford family, although they have minority ownership. *Ford* is the second-largest U.S.-based automaker and the fifth-largest in the world based on 2010 vehicle sales. At the end of 2010, *Ford* was the fifth largest automaker in Europe. *Ford* is the eighth-ranked overall American-based company in the 2010 Fortune 500 list, based on global revenues in 2009 of $118.3 billion. In 2008, *Ford* produced 5.532 million automobiles and employed about 213,000 employees at around 90 plants and facilities worldwide. *Ford*'s authorized agent for service of process is CT Corporation System, 123 E. Marcy Street, Ste. 201, Santa Fe, NM 87501.

7.

Defendants John Does 1-3 are unidentified people or corporations who were, or may have been, involved in recommending, installing, selling, distributing, or otherwise participating in the service of the Cadillac SRX, including installation of the inappropriate tire, wheels, and attachments on the Saenz vehicle. The information necessary to specifically identify who those people and entities are is in the unique and exclusive possession of Defendants Integrity and Saenz and therefore not obtainable.

JURISDICTION AND VENUE

8.

This civil action is brought under theories of strict liability, negligence, breach of implied warranty, personal injury, and wrongful death.

9.

This Court has jurisdiction over the subject matter of this action and venue is proper in Bernalillo County because all or part of Plaintiff's cause of action arose in Bernalillo County, Defendants *GM-LLC* and *Ford* do business in Bernalillo County and maintain statutory agents in New Mexico upon which service of process may be had, and Plaintiff Connie Tibbetts and Defendant Armando Saenz are residents of Bernalillo County, State of New Mexico.

GENERAL ALLEGATIONS

10.

The defective 2005 Cadillac SRX (VIN: IGYEE63A950117981) which forms the basis for this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by ~~Defendant *GM-LLC*~~ Old GM. The Cadillac SRX is a luxury mid-size crossover

SUV produced by the Cadillac division of American automaker General Motors since the 2004 model year. The SRX ~~is~~ was manufactured at ~~GM's~~ Old GM's Lansing Grand River Plant in Lansing, Michigan, as well as assembled overseas in Russia and China. It was designed by ~~GM~~ Old GM from the Cadillac and Cadillac STS platform with the designation GMT-265 (Sigma platform). The SUV ~~is~~ was designed with 116" wheelbase; 195" length; 73" width; and 68" height. The vehicle ~~is~~ was equipped with a five or six-speed automatic transmission. Rear-wheel and four-wheel drive and MagneRide are available. The first generation SRX was available through the 2009 model year. The Insurance Institute for Highway Safety ("IIHS") found the 2005-08 SRX worst in its class for driver fatalities with a death rate of 63 compared to its class average of 23. For the 2010 model year, Cadillac introduced an all-new SRX based on the Provoq concept vehicle. The new version used its own unique platform with ties to Epsilon II.

11.

Defendant Integrity Automotive sold the defective 2005 Cadillac to Defendant Armando Saenz just days before the July 23, 2012, fatal collision.

12.

The defective 2004 Ford Explorer (VIN: 1FMZU73K64ZA14385) which forms the basis of this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by *Ford*. The Ford Explorer is a mid-size sport utility vehicle produced by Ford since 1990 (as 91 model year). Until 2010, the Explorer was formed from a traditional body-on-frame, mid-size SUV design. For the 2011 model year, Ford moved the Explorer to a more modern unibody, full-size crossover SUV/crossover utility vehicle platform, the same Volvo-derived platform the Ford Flex and Ford Taurus use. For purposes of marketing, the Explorer is slotted between the traditional body-on-frame, full-size Ford Expedition and the mid-size CUV Ford Edge. The fifth generation Explorer shares platforms with the Ford Flex and Lincoln MKT. The Explorer has been involved in controversy, after a spate of fatal rollover accidents throughout the 1990s and early 2000s, including those involving Explorers fitted with Firestone tires. The 4-door Explorer and its companion the Mercury Mountaineer were redesigned in 2001, and entirely for the 2002 model year, losing all design similarity with the Ford Ranger while also gaining a similar appearance to the Ford Expedition. The 2002-2004 models saw introduction of stability control as an option, Ford's *AdvanceTrac* with *Roll Stability Control* system. The stability control system became standard for the 2005

model year. For the third generation, Ford installed fully independent rear suspension in the 4-door Ford Explorer and Mercury Mountaineer - but not in the smaller Sport model. The suspension replaced the non-independent "live axle" rear suspension used in previous model year Explorers. With a fully independent rear suspension, each rear wheel connects to the rear differential via a half-shaft drive axle. The design was intended to offer increased ride comfort, on-road handling, and vehicle stability. One reason for Ford's switch to independent rear suspension in the Explorer was due to the well-publicized rollover problem associated with the design, including resulting fatalities that occurred with the previous generations of Ford Explorer. The 2006 model year brought about an update with the introduction of a new frame produced by *Magna International* rather than *Tower Automotive*. By 2008, Ford added side curtain airbags across the Explorer range. By 2009, the Explorer received a trailer sway control system as standard equipment, and the navigation system received traffic flow monitoring and a gas information system. By 2011, the fifth generation Explorer evolved to a unibody structure based on the D4 platform, a modified version of the D3 platform. The newer Explorer featured blacked-out A, B, and D-pillars to produce a *floating roof* effect similar to Land Rover's floating roof design used on its sport utility vehicles. The fifth generation Explorer (2011), assembly moved to Ford's Chicago Assembly plant, where it is built alongside the Ford Taurus and Lincoln MKS. The Louisville plant, where the previous generation was built, was converted to produce cars based on Ford's global C platform (potentially including the Ford Focus, Ford C-Max, and Ford Kuga). Much like Ford's Escape, the Explorer continues to be marketed as an "SUV" rather than a "crossover SUV". With the discontinuation of the Ford Crown Victoria in 2011, and to compete with police model sport utility vehicles offered by other automobile manufacturers, Ford made the 2012 model year Explorer the basis for a "new" SUV-type Police vehicle. It is only available to law enforcement and other emergency services agencies. Ford calls it the *Utility Police Interceptor*. Major differences between the standard Explorer and the Utility Police Interceptor included provisions for emergency services related equipment such as radios, light bars and sirens. Ford actively marketed the so-called "special service" version of the Explorer as the industry's "first pursuit-rated, all-wheel-drive (AWD) vehicle" with special features such as "bigger brakes, springs and mpg figures for surer stopping, better stability, and greater fuel efficiency." Ford likewise represented and warranted that the Explorer

special service version had "faster, ultra-tenacious acceleration thanks to higher horsepower combined with standard AWD", as well as "higher electrical capability". Ford further marketed and sold the police package as "hailing from the same platform so they share many common maintenance parts (no matter the powertrain), including tires, wheels, brake pads, rotors, calipers, and alternator." Ford likewise represented that the design was made for "officer protection" in that it was certified for protection, including certified for a 75 mph rear-impact crash, so-called "shields of armor" as panels for ballistics protection, steel intrusion plates built into the seat backs, and a "safety cell" construction designed to direct force of a collision around the occupant compartment ("SPACE" meaning Side Protection and Cabin Enhancement), including the use of an architecture made of hydro formed cross-vehicle beams between the door frames designed to solidify the sides along with ultra-high-strength steel reinforcement for added occupant protection. The vehicle was marketed with Ford's canopy system and front seat side airbags as well.

13.

On July 23, 2012, Defendant Armando Saenz was driving the 2005 Cadillac SRX northbound on U.S. Interstate 25, at a speed at or near the posted speed limit. During the course of Saenz' journey, he negligently lost control of his vehicle, struck a center concrete barrier, and then veered back to the right where he struck the left side of the 2004 Ford Explorer being driven northbound by the Decedent. Following impact, the Decedent attempted to control the Explorer, but due to its defective design, he was unable to and the Explorer rolled over multiple times causing Decedent to suffer serious injury and death.

COUNT I
NEGLIGENCE
DEFENDANT ARMANDO SAENZ

14.

Defendant Armando Saenz owed the duty to exercise due care in the operation of the vehicle he was driving, including maintaining appropriate speed for the conditions, maintaining control of his vehicle, and operating the vehicle in a non-negligent manner.

15.

Defendant Armando Saenz breached his duties by failing to exercise the reasonable care necessary to maintain control of the vehicle and, specifically, the

defective 2005 Cadillac SRX involved in the fatal collision that forms the basis of Plaintiff's Complaint.

16.

Defendant Armando Saenz' negligence was a contributing cause of the injuries, death and damages complained of by Plaintiff herein.

COUNT II
STRICT LIABILITY/PRODUCT LIABILITY
DEFENDANT FORD

17.

At all times relevant to the subject Complaint, *Ford* was responsible for designing, developing, testing, assembling, manufacturing, marketing, and distributing the defective 2004 Ford Explorer. Absent ordinary wear and tear, including foreseeable use, the subject vehicle was in substantially the same condition at the time of the crash as it was when it left *Ford's* possession.

18.

The Explorer is defective and unreasonably dangerous by design when used as marketed by *Ford.* The inherent defects in the design were present at the time the vehicle was manufactured, marketed, and distributed. The defects in the vehicle were a proximate and producing cause of the injuries, death and damages alleged by Plaintiff herein. At all times relevant to the Complaint, *Ford* was in the business of designing, manufacturing, assembling, marketing, testing, and otherwise distributing automobiles. The defective nature of the design of the Explorer included defects in design, stability, handling, marketing, instructions, warning, crashworthiness, rollover resistance and controllability. The defective nature of the vehicle includes the following:

18.01 The Explorer is defective in that the design of the "package", which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of rollover given the uses for which the vehicle was marketed, especially freeway use and special-service use;

18.02 The Explorer is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency turning maneuvers, including while attempting to avoid crashes and dealing with impacts, and does not remain controllable under all operating conditions as required by *Ford* guidelines, including the tendency to over-steer and skate;

18.03 The Explorer is unreasonably dangerous from a stability standpoint because it rolls over instead of sliding when loss of directional control occurs on relatively flat level surfaces during foreseeable steering maneuvers;

18.04 The combination of the above factors creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

18.05 The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable emergency situations and maneuvers that are consistent with *Ford's* efforts to market the vehicle as a "station wagon" replacement for police use, which *Ford* had both actual and constructive knowledge would lead to rollover crashes. *Ford's* knowledge included both actual knowledge based on its test history with SUVs and its research and knowledge of rollovers in foreseeable turning maneuvers and constructive knowledge given its corporate history with respect to SUV designs, and unique and special knowledge of the dangers posed when operated by aggressive special service public servants;

18.06 The vehicle was defectively marketed in that consumers, including public servants, were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying, station-wagon replacement type vehicle when *Ford* knew that this was untrue. In fact, Ford went further by representing that the police package had special or unique qualities that other Explorers did not have that actually enhanced the safety of the vehicles when exposed to emergencies;

18.07 The risk of operating the vehicle as designed outweighed any benefits associated with the design and *Ford* knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries, and knew that rollover crashes were particularly dangerous;

18.08 *Ford* knew that this type vehicle — an SUV — was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds, especially by police officers who oftentimes are presented with dangerous driving situations;

18.09 The Explorer was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system — roof, occupant compartment, safety cell, safety belt system, anti-ejection design, and glazing design — that would effectively provide reasonable protection in the event of a rollover, with or without pre-roll impact. Similarly, the vehicle was designed in such a manner that unique equipment placement in the vehicle posed unique and unreasonable risk of injury to occupants in all forms of crashes. Despite actual knowledge of the unique dangers posed in rollover

crashes, Ford intentionally marketed the Explorer has having special or unique qualities or characteristics that made it safer than other vehicles for public servants;

18.10 Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing, such as pre-tensioners and side airbags or curtains, *Ford* intentionally marketed the vehicle to consumers, including public servants, for use as a freeway, passenger-carrying vehicle, and intentionally led the public to believe that it was safe, stable, and would provide state of the art protection to occupants exposed to extraordinary conditions;

18.11 *Ford* had both actual and constructive knowledge of the existence of safer,

alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

18.12 *Ford* willfully, wantonly, and consciously marketed the Explorer for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.

19.

Ford's engineers have known for over 30 years, from the time of the development of the Bronco II, that the most important vehicle characteristic in maintaining control and reducing SUV propensity for rollover is understeer, especially in transient maneuvers. *FORD* identified understeer as a "first order effect" and the "primary factor influencing rollover propensity."

20.

The problem with an over-steering vehicle, with respect to rollover propensity, is that it can and likely will result in the back end of the vehicle coming around (a loss of control) with the vehicle ending up sideways to its path of travel. The resulting side forces ("lateral acceleration") contribute to rollover.

21.

Ford also recognized that the rollover stability of a vehicle is affected by its "stability index," or "static stability factor", which is the relationship of center of gravity height and the track width of the vehicle. In light of these common control and stability principles, *Ford* adopted a "handling strategy" with respect to the Explorer to "increase understeer in all conditions."

22.

Ford's engineers recommended major safety changes needed for the Explorer to *Ford* management, yet management ignored and vetoed those changes to increase profits on the vehicle. *Ford* engineers recommended, for example, improvements with regards to the Explorer's suspension, reduction in the engine height to lower the center of gravity, and an increase in the track width of the vehicle to make the Explorer more resistant to rollover than the Bronco II and earlier versions of the Explorer.

23.

Ford's knowledge of the critical importance of understeer was not acted upon, however, and *Ford* management rejected the center of gravity and track width recommendations of its engineers that would have made the Explorer more resistant to rollover. *Ford* declined to make the necessary changes so that there would not be any delays in the production of the Explorer, and thus Ford could recoup its $500 million investment as quickly as possible.

24.

Ford addressed the rollover stability problem primarily by recommending lower air pressure in the tires. As set forth in a 1989 development report, after noting that they had investigated variations in tire pressure "as a means to achieving the UN46 (Explorer) ride and handling objective," *Ford's* engineers recommended use of "reductions in tire pressure to meet the program objectives" for both ride and handling. Likewise, since *Ford's* marketing department was recommending larger tires (which reduced the vehicle's stability), *Ford* again put dollars in front of safety and recommended the larger tire, but with reduced air pressure. When it came to creating understeer, *Ford's* engineers again turned to lower tire pressure.

25.

By putting profits and public relations image before safety, *Ford* produced a vehicle -- beginning with the Ford Bronco II and continuing with minor changes -- that was prone to over-steer, going out of control in response to simple accident avoidance maneuvers, and rollover when operated by the ordinary driver.

26.

The Explorer also has dangerously weak roof pillars (which support the roof structure), incapable of maintaining integrity of the safety cell in the event of a

rollover, and thereby leading to the collapse of the roof — towards the passengers' heads — in a rollover crash.

27.

In the subject crash, the defectively weak roof collapsed and directly attributed to the injuries that took Jon Tibbett's life. The Explorer lacked adequate design features in the roof and structure that should have been present given the high propensity for rollover. The vehicle also lacked structural foam, which would also have substantially and feasibly increased the roof strength. *Ford* also failed to equip, as standard equipment, the 2004 Ford Explorer with electronic stability control, a feasible alternative design that would have likely avoided the rollover and injuries in the subject crash.

28.

Ford knew of the propensity of the Ford Explorer to rollover from the mid 1980's when the initial version of the program was approved. *Ford* was aware of the rollover problems of the Jeep CJ5 in the 1970s and 1980s, which were alleviated by simply lowering and widening the design. *Ford* had also experienced similar situations concerning rollover incidents dating back to the Bronco II. It is thus obvious that Ford was aware of the rollover issues concerning the Ford Explorer.

29.

Not only did *Ford's* own testing show that there were unacceptable Explorer rollover problems, but the high number of real world incidents also made *Ford* aware that attention should be directed to this issue. However, *Ford* made no significant attempt to correct the problem despite having the capacity and technology to do so.

30.

A safer alternative design was economically and technologically feasible at the time the product left the control of *Ford*, both with respect to rollover propensity and crash protection.

31.

The defective nature of the vehicle was a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, including his enhanced injuries, and the resulting damages suffered and sought by the Plaintiff herein. *Ford* is strictly liable for supplying the defective and unreasonably dangerous product.

COUNT III
NEGLIGENCE

DEFENDANT *FORD*

32.

At all times relevant to this Complaint, *Ford* was in the business of supplying motor vehicles for use on the public roadways. *Ford* held itself out to the public as having specialized knowledge in the industry. As such, *Ford* owed consumers, including Decedent and Plaintiff, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the Explorer. *Ford* violated this duty by negligently supplying a vehicle that was defective. The negligent acts include but are not limited to the following acts or omissions:

- Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;
- Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;
- Negligently designing and testing the vehicle from an occupant protection standpoint, and then marketing it for special use by public servants knowing full well that the features it represented did not exist in reality;
- Negligently testing of the vehicle from a handling and stability standpoint;
- Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;
- Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;
- Failing to disclose known defects, dangers, and problems to both dealers and the public;
- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;
- Failure to meet or exceed internal corporate guidelines;
- Negligently advertising the vehicle as safe and stable family vehicle and one that was ultra-safe for use by public servants;
- Failing to inform the consumer, including the Plaintiff and Decedent, of the information *Ford* knew about rollover risks, and specifically the Explorer, thus depriving the Plaintiff and Decedent of the right to make a conscious and free choice, and also in failing to disclose known problems in foreign countries in an effort to conceal problems that *Ford* knew about the Explorer from U.S. consumers, including the Plaintiff and Decedent;

- Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of roll sensing, pre-tensioners, side air bag and curtain technology, and integrated seating technology;

- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

- Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;

- Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.

33.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, his enhanced injuries, including his death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT IV
BREACH OF WARRANTY
DEFENDANT FORD

34.

At all times relevant to the complaint, *Ford* was a "merchant" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, Ford breached the warranties of merchantability and fitness for a particular purpose in that the 2004 Explorer was not fit for ordinary use or for the intended use for which it was purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, enhanced injuries, and the resulting damages suffered and sought by the Plaintiff herein. The product was unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

COUNT V
STRICT LIABILITY/PRODUCT LIABILITY
DEFENDANTS *GM-LLC* AND INTEGRITY AUTOMOTIVE

35.

At all times relevant to the present Complaint, ~~GM-LLC~~ Old GM was responsible for designing, developing, testing, assembling, manufacturing, marketing, and

distributing the defective 2005 Cadillac SRX. Absent foreseeable wear, tear, modifications, and usage, the subject vehicle was in substantially the same condition at the time of the crash as it was when it left ~~*GM-LLC's*~~ Old GM's possession.

36.

At all relevant times hereto, Defendant Integrity Automotive was engaged in the business of marketing, distribution, sales and service of motorized vehicles in New Mexico, and held itself out as having special knowledge and expertise. Integrity placed the subject defective vehicle into the stream of commerce in a condition that was defective and unreasonably dangerous, including non-approved, low-profile tires and loose tie rods.

37.

Upon information and belief, and at all material times hereto, ~~Defendants *GM-LLC*~~ Old GM and Integrity Automotive marketed, distributed, sold and/or serviced the subject 2005 Cadillac SRX, and the Cadillac was in substantially the same condition, with respect to its steering mechanism, handling, maneuverability and stability, as it was when it was initially placed in the stream of commerce by ~~*GM-LLC*.~~ Old GM

38.

The Cadillac SRX is defective and unreasonably dangerous by design when used as marketed. The inherent defects in the design were present at the time the vehicle was manufactured, marketed, and distributed. The defects in the vehicle were a proximate and producing cause of the injuries, including the severity of the injuries, death and damages alleged by Plaintiff herein. At all times relevant to the Complaint, ~~*GM-LLC*~~ Old GM was in the business of designing, manufacturing, assembling, marketing, testing, and otherwise distributing automobiles. The defective nature of the design of the 2005 Cadillac SRX included defects in design, stability, steering, handling, marketing, instructions, warning, and controllability. The defective nature of the vehicle includes the following:

- The Cadillac SRX is defective from a handling standpoint because it does not remain controllable under all operating conditions as required by ~~*GM-LLC*~~ Old GM guidelines;
- The inability to control the vehicle at all times creates an extreme risk of steering and controllability that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

- Old GM ~~GM-LLC~~ knew that this type vehicle — an SUV — was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds;
- Old GM ~~GM-LLC~~ had both actual and constructive knowledge of the existence of safer, alternative designs from both a steering and controllability standpoint, including roll sensing, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;
- Old GM ~~GM-LLC willfully, wantonly, and consciously~~ marketed the Cadillac SRX for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in ~~conscious~~ disregard for the public.

39.

By putting profits and public relations image before safety, Old GM ~~GM-LLC~~ produced a vehicle that was prone to unreasonable steering and controllability, including going out of control in response to simple accident avoidance maneuvers when operated by the ordinary driver in foreseeable circumstances.

40.

Old GM ~~GM-LLC~~ failed to equip, as standard equipment, the 2005 Cadillac SRX with adequate and proper control features that would have likely avoided the uncontrollability of the vehicle which contributed to the collision and injuries in the subject crash.

41.

Not only did Old GM's ~~GM-LLC's~~ own testing show that there were unacceptable Cadillac SRX problems, but the high number of real world incidents also made Old GM's ~~GM-LLC~~ aware that attention should be directed to this issue. However, Old GM's ~~GM-LLC~~ made no significant attempt to correct the problem despite having the capacity and technology to do so.

42.

A safer alternative design was economically and technologically feasible at the time the product left the control of Old GM's ~~GM-LLC~~, both with respect to steering, controllability, and electronic stability control.

43.

The defective nature of the vehicle was a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered

and sought by the Plaintiff herein. Defendants *GM-LLC* and Integrity Automotive are strictly liable for supplying the defective and unreasonably dangerous product.

COUNT VI
NEGLIGENCE
DEFENDANT *GM-LLC*

44.

At all times relevant to this Complaint, ~~*GM-LLC*~~ Old GM was in the business of supplying motor vehicles for use on the public roadways. ~~*GM-LLC*~~ Old GM held itself out to the public as having specialized knowledge in the industry. As such, ~~*GM-LLC*~~ Old GM owed a duty to persons using those vehicles, and persons whom ~~*GM-LLC*~~ Old GM reasonably expected to be in the vicinity during the use of those vehicles, including Decedent Jon Tibbetts, to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the 2005 Cadillac SRX. ~~*GM-LLC*~~ Old GM violated this duty by negligently supplying a vehicle that was defective. The negligent acts* include but are not limited to the following acts or omissions:

*insert: of Old GM

- Negligently designing the vehicle from a steering, handling and controllability standpoint given the manner in which it was marketed;
- Negligently designing and testing the vehicle from a steering and controllability standpoint;
- Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;
- Failing to disclose known defects, dangers, and problems to both dealers and the public;
- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;
- Failing to meet or exceed internal corporate guidelines;
- Negligently advertising the vehicle as safe and stable family vehicle;
- Failing to comply with the state of the art in the automotive industry insofar as providing a reasonable electronic stability control system is concerned;
- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to steering, steering linkages, handling and controllability, and/or failing to test appropriately to ensure compliance;

- ~~Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety; and~~

- ~~Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.~~

45.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT VII
NEGLIGENCE
DEFENDANT INTEGRITY AUTOMOTIVE

46.

At all relevant times, Defendant Integrity Automotive owed Decedent and Plaintiff a duty of reasonable care. Defendant Integrity Automotive breached that duty of care and was otherwise negligent for the acts complained of herein. The negligence of Defendant Integrity Automotive combined to cause and/or contribute to Decedent's and Plaintiff's resulting injuries, death, losses and damages as set forth more fully herein. The negligence acts of Defendant Integrity Automotive include, but are not limited to the following:

- Negligently marketing the 2005 Cadillac SRX as a safe and stable passenger vehicle given the uses for which it was marketed;

- Failing to adequately inspect, service and equip the vehicle with safe and required equipment;

- Failing to ensure the vehicle was mechanically in good repair before allowing the vehicle to be sold to customers and used upon the roadways and highways open to the general public;

- Failing to disclose known defects, dangers, and problems regarding the vehicle;

- Failing to remove the 22 inch rims and the 265/35R22 tires that were on the vehicle, and then distributing the vehicle in a condition known to be dangerous;

- Failing to retrofit the vehicle with rims and tires specified by the manufacture to ensure and enhance the vehicle's safety; and

- Failing to advise or warn the vehicle's purchasers that size 22 inch rims and 265/35R22 tires were not specified by GM for use on the Cadillac SRX.

47.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT VIII
BREACH OF WARRANTY
DEFENDANTS *GM-LLC* AND INTEGRITY AUTOMOTIVE

48.

At all times relevant to the complaint, ~~Defendants *GM-LLC*~~ Old GM *and* Integrity Automotive were "merchants" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, ~~these defendants~~ Old GM and Integrity Automotive breached the warranties of merchantability and fitness for a particular purpose in that the 2005 Cadillac SRX was not fit for ordinary use or for the intended use for which it was purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The product was unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

COUNT IX
NEGLIGENCE
JOHN DOES 1-3

49.

At all relevant times, Defendants John Does 1-3 owed Decedent and Plaintiff a duty of reasonable care. Defendant John Does 1-3 breached that duty of care and were otherwise negligent for the acts complained of herein. The negligence of Defendants John Does 1-3 combined to cause and/or contribute to Decedent's and Plaintiff's resulting injuries, death, losses and damages as set forth more fully herein. The negligent acts of Defendants John Does 1-3 include, but are not limited to the following:

- Failing to adequately inspect, service and equip the 2005 Cadillac SRX vehicle with safe and required equipment;

- Failing to install and fit the vehicle with rims and tires specified by the manufacture to ensure and enhance the vehicle's safety;
- Installing inappropriate rims and tires on Defendant Saenz' SRX, including the 22 inch rims and the 265/35R22 tires that were on the vehicle at the time of the collision;
- Failing to ensure the SRX was mechanically in good repair before allowing the vehicle to be used upon the roadways and highways open to the general public; and
- Failing to advise or warn the vehicle's purchasers and users that size 22 inch rims and 265/35R22 tires were not specified by GM for use on the Cadillac SRX.

50.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT X
BREACH OF WARRANTY
DEFENDANTS JOHN DOES 1-3

51.

At all times relevant to the complaint, Defendants John Does 1-3 were "merchants" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, these defendants breached the warranties of merchantability and fitness for a particular purpose in that the inappropriate 22 inch rims and the 265/35R22 tires that were on the 2005 Cadillac SRX were not fit for ordinary use or for the intended use for which they were purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. These products were unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

DAMAGES
INCLUDING LOSS OF CONSORTIUM

52.

The actions and/or inactions of Defendants *Ford*, *GM-LLC*, Integrity Automotive, Armando Saenz, and John Does 1-3, including the aggravating circumstances attending those acts and/or failures to act, caused and/or contributed to Decedent's serious injuries and death, and the resulting damages therefrom include:

* Conscious pain and suffering;
* Mental anguish and distress,
* Medical expenses;
* Disfigurement and death;
* Funeral and burial expenses;
* Property damages;
* Loss of earnings and earning capacity;
* Loss of life and enjoyment of life; and
* Loss of household services; all for which Plaintiff seeks relief pursuant to the New Mexico Wrongful Death Act and other New Mexico law.

53.

Plaintiff Connie Tibbetts enjoyed a very special marital, familial, loving, care-giving and intimate relationship with her husband Jon Tibbetts.

54.

Plaintiff Connie Tibbetts suffered and will continue to suffer from the emotional distress caused by the loss of society, companionship and sexual relations she enjoyed with her husband, Jon Tibbetts, which was wrongfully taken from her as a result of his tragic death.

55.

The actions and/or inactions of ~~Defendants~~ *Ford*, Old GM ~~*GM-LLC*~~, Integrity Automotive, Armando Saenz, and John Does 1-3, including the aggravating circumstances attending those acts and/or failures to act, caused and/or contributed to Plaintiff's loss of consortium damages, and Plaintiff is entitled to a recovery against each of the Defendants for these damages in an amount to be awarded by the jury herein.

PUNITIVE/EXEMPLARY DAMAGES

56.

In addition to compensatory damages, Plaintiff is seeking punitive damages from Defendants Integrity Automotive, *Ford*, ~~*GM-LLC*~~ and John Does 1-3, because their conduct constitutes reckless, grossly negligent, willful, wanton, malicious *

behavior that needs to be punished in order to deter others from participating in similar future misconduct. The acts set forth in this complaint were taken with knowledge of the associated risks to consumers. Integrity Automotive, Ford and John Does 1-3 ~~These defendants~~ took the steps set forth herein in conscious disregard for the potential consequences and under circumstances for which a jury could determine that they willfully, wantonly, recklessly, maliciously, and consciously indifferent to the consequences, endangered human life. Integrity Automotive, Ford and John Does 1-3 ~~These defendants~~ deserve to be punished in a civil forum for the malicious misconduct. The amount of punitive damages to be awarded is within the discretion of the jury.

WHEREFORE, PLAINTIFF prays for judgment for compensatory and punitive damages as set forth in this Complaint, pre- and post-judgment interest, costs and fees in connection with this action, and for any and all other just relief this court may deem appropriate.

Dated this 9th day of June, 2015.

Respectfully submitted,

WILL FERGUSON & ASSOCIATES

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