M-10-468

[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Pursuant to Section 157(a) of the Bankruptcy Amendments and Federal Judgeship Act of 1984, any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 are referred to the bankruptcy judges for this district.

So Ordered,

Robert J. Ward

ROBERT J. WARD
Acting Chief Judge

July 10, 1984

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

Case Number: CV10 2683 AHM VBKx

CLASS ACTION COMPLAINT FOR:

(1) Violations of California Consumer Legal Remedies Act

(2) Violations of Unfair Business Practices Act – Secret Warranty

(3) Violations of Unfair Business Practices Act

(4) Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty Act

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff Rodolfo F. Mendoza ("Plaintiff") brings this action for himself and on behalf of all similarly situated persons ("Class Members") who purchased or leased certain defective sports utility vehicles manufactured by Defendant General Motors, LLC ("GM" or "Defendant").

2. Defendant designed, manufactured, distributed, sold, and leased Chevrolet Equinox sport utility vehicles ("SUV") of model years 2005 to 2009 and Pontiac Torrent SUVs of model years 2006 to 2009 (collectively, the "Class Vehicles") to Plaintiff and Class Members.

3. Beginning in 2005, if not before, Defendant knew or should have known that the Class Vehicles contain one or more design flaws and/or structural defects that causes them to be highly prone to water leaks and flooding (the "water leak defect"), including but not limited to water leaks that result in flooding of the trunk and spare tire well, water leaks that result in damage to the vehicles' front lights and taillights, as well as water leaks to the car's interior cabin, causing mold and electrical failure due to the water damaging the computer, electrical system, and interior components of the Class Vehicles.

4. The water leak defect presents a safety hazard and is unreasonably dangerous to consumers for several reasons.

5. The water leak defect is dangerous because of the danger of catastrophic engine and/or electrical system failure as a result of the water damaging the vehicle's interior components while the vehicle is in operation. Thus, the flooding can cause engine failure, suddenly and unexpectedly, at anytime and under any driving condition or speed, thereby contributing to traffic accidents, which can result in personal injury or death.

6. The water leak defect is also known to cause tail lights to fail or malfunction. This creates an unreasonably dangerous situation for the driver and vehicles behind the driver that can potentially lead to rear-end accidents, or at the

very least, can result in traffic violations, tickets, and increased insurance premiums for the Class Vehicles' drivers.

7. Further, the water leak defect is particularly dangerous in a relatively closed environment like that found inside an SUV such as the Class Vehicles (even more so when the air is being recycled) because it can promote mold growth. For example, when it rains or when the vehicle is washed, the failure of the Class Vehicles to prevent water from entering the vehicle causes the water to accumulate in the trunk and/or passenger compartment, causing mold (as well as bacteria and other contaminants) to infect the air of the car's interior cabin, thereby exposing Class Members, their passengers, and individuals with whom they come in contact to serious health risks.

8. Mold reproduces by generating spores that are released into the air, which then land on moist surfaces. They thrive in dark, warm, and moist locations, such as inside trunks and under tire wells, under wet carpets, within the vehicles' interior cabins, and other such locations. Mold can trigger numerous health problems, including allergic reactions and asthma attacks. For example, exposure to these mold and other contaminants can cause difficulty breathing and headaches, as well as asthma and allergies, in those who would not otherwise have such health problems. These dangers are exacerbated by the fact that the mold and other contaminants can be transferred by touch to other surfaces separate from the vehicle. So, for example, if a passenger places an object in the trunk of a vehicle with mold, that mold can attach to the surface of that object and will be taken wherever that object is taken, *e.g.*, the home, the workplace, school, etc. Complaints from exposure to mold include, but are not limited to, flu-like symptoms, chronic fatigue syndrome, memory impairment, migraine headaches, sick-building syndrome, dizziness, and nosebleeds.[1]

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[1] These are the mild symptoms. Many researchers claim that mold can attack several main body systems, including the brain, the central nervous

9. The soaked interiors of Class Vehicles subject to the water leak defect are also extremely difficult to dry properly and are often prone to hazardous mold and odor, even after several detailed cleanings. Moreover, smaller, initial leaks, as well accumulation of water under the tire well—while still causing the same damage to the vehicles and their owners (*i.e.*, hazardous mold)—often go undetected for months or years.

10. In addition to safety hazards, the cost of the water leak defect to consumers can be exorbitant because consumers will be required to pay hundreds, if not thousands, of dollars both to repair the water leak defect and to repair the extensive damage that it causes to the vehicle's flooring, carpeting, and electrical systems.

11. Plaintiff is informed and believes and based thereon alleges that Defendant knows or should have known that the Class Vehicles are defective and not fit for their intended purpose of safe and reliable transportation. Nevertheless, Defendant has actively concealed and failed to disclose this defect from Plaintiff and the Class Members at the time of purchase or lease and thereafter.

12. Plaintiff is informed and believes and based thereon alleges that as the number of consumer complaints about the water leak defect increased, Defendant issued a secret technical service bulletin ("TSB") to its dealers in which it implemented cheaper, albeit temporary, fixes: mainly replacing and/or resealing (with a special "3M(TM) Ultrapro Autobody Sealant Clear or [its] equivalent") various structural components of the Class Vehicles that are defective, in part, because of insufficient, inadequate, or improperly applied body sealer. Although Defendant normally attributes water leaks to outside influences and does not cover

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system, and the immune system. Mold has been the direct cause of some deaths. Asthmatics, infants, and individuals suffering immune system deficiencies are particularly susceptible to the deleterious effects of mold. People with asthma when exposed to strong concentrations of mold can literally die from such exposure.

them under warranty, it has nevertheless instructed its dealers to perform the resealing and/or or replacement program at no cost to the consumer.

13. However, Defendant's clandestine program to temporarily fix the water leak defect, with a special sealer, was strictly limited to the most persistent customers and only those who complained loudly enough. For example, when Plaintiff's daughter complained about the water leak defect, she was told by a GM authorized dealer that "it happens here all the time" and to "just air it out."

14. Plaintiff is informed and believes and based thereon alleges that if Defendant's secret, temporary fixes, including resealing of the various structural components of the Class Vehicles with the special sealer, are successful, the effect of these fixes only last long enough to ensure that the manifestation of the water leak defect occurs outside of warranty period, but they will not permanently remedy the problem. This ultimately leaves consumers with defective vehicles that are substantially certain to again experience the water leak defect, the consequent damage caused by water leaks, and the associated safety hazards.

15. Plaintiff is also informed and believes and based thereon alleges that Defendant is aware that replacing and/or resealing the various structural components of the Class Vehicles does not fix the water leak defect. However, Defendant has implemented the replacing and/or resealing process simply to prolong the amount of time that will elapse before the water leak problem again manifests itself; thus, helping ensure that the water leak defect occurs outside of the warranty period so that Defendant can easily and unfairly shift financial responsibility for the water leak defect to Class Members.

16. Plaintiff is also informed and believes and based thereon alleges that to mollify those consumers who complain loudly enough, Defendant implemented another clandestine program to secretly reimburse or pay for repair costs of those Class Vehicles that suffer from the water leak defect and the related damage that it causes, even when the water leak defect and the related damage that it causes

occurs outside the vehicle's 3-year/36,000-mile express warranty period. However, as with its secret TSB program, Defendant's secret repair and/or reimbursement program is also strictly limited to the most persistent customers who complain loudly enough. For example, Defendant refused to replace Plaintiff's indoor carpeting damaged by the water leak defect while agreeing to replace or reimburse the floor carpeting and other similar items which is similar to the manner in which Defendant deals with the most persistent customers who complain loudly enough.

17. Plaintiff is informed and believes and based thereon alleges that despite notice of the defect from numerous customer complaints, Defendant has not recalled the Class Vehicles to repair the defect, has not offered its customers a suitable repair or replacement free of charge, and has not offered to reimburse the Class Vehicles' owners and leaseholders the costs they incurred relating to repairing water leaks and the related damage that it causes, including but not limited to repairing or replacing electrical components and floor carpeting, detailed cleaning and drying, removal of foul odors, repairs from water damage, increased insurance premiums, vehicle rental costs, etc.

18. Defendant knew and concealed the defects that are contained in every Class Vehicle, along with the attendant dangerous safety problems and associated repair costs, from Plaintiff and Class Members both at the time of sale and repair and thereafter. Had Plaintiff and the Class Members known about these defects at the time of sale or lease, Plaintiff and the Class Members would not have purchased the Class Vehicles or would have paid less for them. As a result of their reliance on Defendant's omissions and/or misrepresentation, owners and/or lessees of the Class Vehicles have suffered ascertainable loss of money, property, and/or loss in value.

19. Additionally, as a result of the water leak defect in the Class Vehicles, Plaintiff and the Class Members have been harmed and have suffered

actual damages in that the Class Vehicles are experiencing continuous, progressive, and repeated water leak defect problems and/or are substantially certain to experience water leak defect problems before their expected useful life has run.

PARTIES

Plaintiff:

20. Plaintiff Rodolfo Mendoza is a California citizen who lives in Los Angeles County, California. Mr. Mendoza purchased a used 2008 Chevrolet Equinox LS from Wondries Chevrolet on January 18, 2009. Mr. Mendoza purchased this vehicle primarily for his personal, family, or household purposes. This vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by Defendant, and bears the Vehicle Identification No. 2CNDL13F786001899.

21. In December 2009, with approximately 35,000 miles on the vehicle's odometer and after a week with a great deal of rainfall, Mr. Mendoza's daughter, Ms. Janet Mendoza, noticed a pungent odor emanating from the vehicle that caused her light headaches and breathing difficulties. A few days later when clearing out the back seat of the vehicle, Ms. Mendoza noticed that her file folders had fallen out and were wet. Upon further investigation, Ms. Mendoza noticed that the rear passenger and driver side seat of the vehicle were all wet.

22. On December 15, 2009, Ms. Mendoza brought the vehicle to an authorized GM dealer, complaining that there was a foul odor and that water was leaking inside the vehicle. In response, the dealer instructed Ms. Mendoza to "just air it out" and that "it happens here all the time." Not satisfied with this response, Ms. Mendoza visited another authorized GM dealer, who ultimately sent her to O'Donnell Chevrolet-Buick, GM's authorized dealer in San Gabriel, CA. The sales manager there inspected the vehicle, opened up the trunk, and showed Ms.

Mendoza that (in addition to the interior of the vehicle) the spare tire pit in the trunk was also full of water.

23. O'Donnell Chevrolet did not provide Plaintiff with the fixes that Defendant had outlined in its clandestine TSB program to its dealers.

24. The GM dealer also confirmed that there was mold and an associated mildew odor in the vehicle but refused Plaintiff's request to replace the carpets.

25. When the vehicle was finally returned to Plaintiff and her daughter, the vehicle still smelled of mildew. In fact, Plaintiff's vehicle continues to experience problems associated with the water leak defect.

26. In addition to other damages, Plaintiff has incurred damages related to clearing the interior carpets of the vehicle. Similarly, like other class members, Plaintiff has not received the fixes outlined in Defendant's secret TSB.

27. At all time, Plaintiff, like all Class Members, has driven his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

Defendant:

28. Defendant GM is a Delaware Limited Liability Company with its headquarters and principal place of business in the State of Michigan. Defendant does business in the state of California. Defendant designs, tests, manufactures, distributes, sells, and leases Class Vehicles and sports utility Class Vehicles under several prominent brand names, including but not limited to Chevrolet, GMC, GM and Pontiac throughout the United States.

JURISDICTION

29. This is a class action.

30. Members of the proposed Plaintiff Class are citizen of California, a state different from the home state of Defendant.

31. On information and belief, the aggregate claims of individual Class Members exceed $5,000,000, exclusive of interest and costs.

32. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

VENUE

33. Defendant, through its business of distributing, selling, and leasing its Class Vehicles, has established sufficient contacts in this district such that it is subject to personal jurisdiction here. Defendant is deemed to reside in this district pursuant to 28 U.S.C. § 1391(a). Plaintiff's counsel's Declaration, as required under California Civil Code section 1780(c), which reflects that Defendant's principal place of business in California is in Los Angeles County, California, is attached as Exhibit 1.

34. In addition, a substantial part of the events or omissions giving rise to these claims and a substantial part of the property that is the subject of this action are in this district.

35. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

APPLICABLE LAW

36. California State law applies to all claims in this action.

FACTUAL ALLEGATIONS

37. For years, Defendant has designed, manufactured, distributed, sold, and leased the Class Vehicles. Upon information and belief, it has sold, directly or indirectly through dealers and other retail outlets, thousands, if not tens of thousands, of Class Vehicles in California and nationwide.

38. The Class Vehicles contain a water leak defect. This defect is substantially and unreasonably dangerous, as it can result in drivers of the Class Vehicles being exposed to hazardous contaminants, such as mold. Further, the water leak defect can lead to irreparable damage to electrical and mechanical components in the Class Vehicles, such as the front lights and tail lights, which creates a serious operational and safety concern to both the Class Vehicles' occupants and the public.

39. The water leak defect is also dangerous because of the danger of catastrophic engine and/or electrical system failure as a result of leaked water

damaging the vehicle's interior components while the vehicle is in operation. Thus, the flooding can cause engine failure, suddenly and unexpectedly, at any time and under any driving condition or at any speed, thereby contributing to traffic accidents, which can result in personal injury or death.

40. Plaintiff is informed and believes and based thereon alleges that Defendant acquired its knowledge of the water leak defect through sources not available to Class Members, including but not limited to pre-release testing data, early consumer complaints about the water leak defect to Defendant and its dealers who are its agents for vehicle repairs, testing conducted in response to those complaints, aggregate data from Defendant's dealers, and from other internal sources.

41. Hundreds, if not thousands, of purchasers and lessees of the Class Vehicles have experienced problems with water leaks. Complaints filed by consumers with the NHTSA and posted on the Internet demonstrate that the defect is widespread and dangerous, and that it manifests without warning. The complaints also indicate Defendant's awareness of the defect and how potentially dangerous the defective condition is (note that spelling and grammar mistakes remain as found in the original):

- NHTSA Complaint: ON JAN. 11, 2010, I STARTED MY CAR TO LET IT WARM UP BEFORE LEAVING FOR WORK. I LET THE CAR RUN FOR ABOUT 10 MINUTES. DROVE THE 20 MINUTE DRIVE TO WORK, AND WHEN I GOT DOWNTOWN, THE CAR SHUT DOWN AND ALL OF THE WARNING LIGHTS ON THE DASHBOARD CAME ON. WAS ABLE TO COAST TO SIDE OF STREET AND STOP CAR. RESTARTED CAR AND PUT INTO DRIVE. ALL WARNING LIGHTS STILL ON, AND DON'T HAVE ANY POWER. WAS ABLE TO COAX CAR TO GO THREE BLOCKS TO PARKING LOT, AND CALLED DEALER WHO

CAME AND GOT THE CAR. AFTER CHECKING, I WAS TOLD THAT WATER HAD LEAKED DOWN THE RIGHT FRONT PASSENGER SIDE OF THE WINDOW, FREEZING, THAWING AND BACKING UP WHICH GOT TO THE WIRING AND BURNT IT OUT. REALLY GLAD THAT I WASN'T ON THE INTERSTATE THAT MORNING. *TR

- NHTSA Complaint: EQUINOX HAS HAD POWER FAILURE WHILE DRIVING 6+ TIMES...ALL WHEN DRIVING IN WET CONDITIONS (EITHER RAINING OR HAVING JUST RAINED). FIRST TIME WAS TOLD BY DEALERSHIP THAT I DROVE THRU A PUDDLE AND GOT EVERYTHING WET (I DIDN'T); HAD SOMETHING TO DO WITH THE ELECTRICAL SYSTEM REPLACED. HAVE TAKEN CAR BACK TO DEALER WITHIN THE LAST TWO MONTHS BECAUSE IT HAPPENED AGAIN, AND WAS TOLD ALL OF MY WEATHERSTRIPPING NEEDED REPLACING B/C THAT WAS ALLOWING WATER IN. HAD THIS DONE. HAPPENED AGAIN TONIGHT (WET WEATHER TODAY, BUT WAS NOT RAINING WHEN I WAS DRIVING). THE OTHER TIMES THIS HAS OCCURRED, I'VE LET MY EQUINOX SIT WHERE IT DIED FOR A FEW DAYS TO LET IT "DRY OUT" AND THAT HAS WORKED, BUT THIS NOT EXACTLY THE BEST SOLUTION AS I DON'T LIVE IN THE DESERT AND IT DOES RAIN HERE. CHEVY DEALER OF NO HELP; SAID HE AGREES THERE IS A MANUFACTURING DEFECT BUT THERE IS NOTHING HE CAN DO ABOUT IT. ADVISED ME TO CALL CHEVY CS. I HAVE DEALT WITH THEM BEFORE ON ANOTHER EQUINOX ISSUE AND THEY

WERE OF NO HELP. WISH I WOULD HAVE INVESTIGATED MY STATE'S LEMON LAW IN TIME. SUDDEN AND TOTAL LOSS OF POWER IS DANGEROUS!! *TR

- NHTSA Complaint: EVERYTIME THAT I TAKE MY CAR IN FOR A QUICK CAR WASH OR IF IT RAINS REALLY HARD (IN FLORIDA IT DOES)... WATER LEAKS THROUGH THE LIGHTS IN THE CEILING, THE BACK HATCH, AND THROUGH THE FLOOR BOARDS. MY CHECK ENGINE LIGHT COMES ON AND THE DEALER TELLS ME THAT IT IS WATER CORROSION FROM THE WATER LEAKING THROUGH THE ELECTRICAL WIRING HARNESS. THIS CAUSES MY CAR TO RUN, EVEN THOUGH I HAVE MY PEDAL TO THE FLOOR, VERY SLOW. I CAN'T GO PAST 10MPH. I AM AFRAID OF ELECTRICAL FIRE. I CAN HARDLY TURN A CORNER... I AM AFRAID OF A CAR ACCIDENT. MY CAR IS ONLY 2 YEARS OLD NOW... 4/2008 AND THIS HAS HAPPENED A 3RD TIME. MY BATTERY HAS ALREADY HAD TO BE REPLACED AND MY RADIO REPLACED TWICE BECAUSE OF THE "CD CHANGER ERROR". NOW I CAN ONLY IMAGINE, WITH ALL OF THE WATER THAT KEEPS COMING IN, WHAT CONDITION MY CAR WILL BE IN A FEW MONTHS FROM NOW. ELECTRICAL PROBLEMS, BAD SMELL, CORRODING FLOOR BOARDS AND WHO KNOWS WHAT ELSE. *TR
- NHTSA Complaint: THE CONTACT STATED THAT WHILE DRIVING IN THE RAIN VEHICLE LOST POWER. THIS HAS HAPPENED SEVERAL TIMES WITHIN THE LAST 6 MONTHS. THE CONTACT TOOK THE VEHICLE TO THE DEALERSHIP

TO BE SERVICED AND THEY HAVE NOT BEEN ABLE TO DIAGNOSIS THE FAILURE. *AK

- NHTSA Complaint: 2007 PONTIAC TORRENT (CHEVROLET EQUINOX) SHUTTERS AND ABS BRAKES MALFUNCTION DURING HEAVY RAIN STORMS. SHUTTERING FEELING IS VERY PRONOUNCED, ENTIRE DRIVE TRAIN SHAKES. THIS COMPLAINT IS SIMILAR OR IDENTICAL TO OPI # 10230804 AND 10211398. IT HAS OCCURRED SINCE THE CAR WAS NEW, ABOUT 20 TIMES, CAR NOW HAS 51,000 MILES. MULTIPLE DEALER RETURNS COULD NOT DUPLICATE.
- NHTSA Complaint: THE BACK FLOORBOARD OF MY CAR HAS BEEN NOTICABLY WET FOR A FEW MONTHS. MY CAR IS OUT OF WARRANTY SO I BEGAN RESEARCHING ONLINE TO SEE WHAT MIGHT BE THE PROBLEM. THE SEALS AROUND THE DOORS WERE FINE. I DID FIND 3" OF WATER LAYING IN MY SPARE TIRE COMPARTMENT. THERE IS NO DRAIN HOLE FOR THE WATER TO BE REMOVED. THE WATER IS COMING IN FROM THE TAIL LIGHTS. THE DEALERSHIP I PURCHASED THE EQUINOX FROM SIMPLY LAUGHED AT THE PROBLEM AND SAID IT WOULD COST OVER $200 TO REPLACE JUST THE TAIL LIGHT. THE SMELL INSIDE OF THE VEHICLE IS HORRIBLE. IT IS OBVIOUSLY RUSTING THE BODY AND CAUSING MOLD AND MILDEW INSIDE THE VEHICLE. *TR
- NHTSA Complaint: I AM EXPERIENCING AN EXTREMELY STRONG MILDEW SMELL INSIDE MY EQUINOX. IT IS SO STRONG PEOPLE COMMENT OUTSIDE THE CAR. THE SMELL ALSO PENETRATES CLOTHING SO THAT OTHERS

NOTICE THE SMELL. PEOPLE WILL NOT RIDE IN MY CAR. I HAVE HAD IT TO THE DEALER TWICE. BOTH TIMES THE ODOR IMPROVES SLIGHTLY (THEY DEPDORIZE THE HVAC) BUT STILL OTHERS COMMENT. I AM CONCERNED ABOUT DRIVING MY 3 YEAR OLD B/C OF THE SMELL. WE HAVE FOUND NO VISIBLE WETNESS OR MOLD. THE RUBBER AROUND TWO WINDOWS WAS LOOSE BUT THE DEALER DID NOT FIND WATER INSIDE THE DOOR. THE SMELL DOES NOT SEEM TO BE COMING FROM THE VENTS BUT MORES SO JUST FROM THE CAR. *NM

- NHTSA Complaint: . . . WATER SOAKING FLOOR BOARDS TWICE CAUSING MOLD & MILDEW . . . . *NM
- NHTSA Complaint: . . . THE CONSUMER HAD DRIVEN THROUGH A CAR WASH, THE DOME LIGHT HAD FILLED WITH WATER, THE LOWER DASH WAS DRIPPING WATER . . . . *SC *JB
- NHTSA Complaint: SPARE TIRE WELL UNDER THE FLOOR IN THE REAR OF MY EQUINOX FILLS WITH WATER. THIS MORNING IT HAD MORE THAN TWO INCHES. I DID NOT REALIZE THIS WAS HAPPENING AND I DO NOT KNOW WHERE IT IS COMING FROM. MY NEIGHBOR HAS THE SAME PROBLEM AS DOES HIS COWORKER (BOTH ARE FLEET VEHICLES). HE JUST TOLD ME ABOUT IT AND I LOOKED IN MINE. HE HAS GOTTEN A NEW COMPANY CAR AS HE WAS GETTING SICK FROM MOLD FROM THE LEAK.
- NHTSA Complaint: I HAD TO HAVE MY TRUNK COMPARTMENT REPLACED AND SOME AREAS AROUND THE FRAME OF THE BODY RE-SEALED DUE TO EXCESS

WATER ACCUMULATING IN THE SPARE TIME AREA. I WAS FIRST TOLD BY THE DEALER REPAIR SHOP THAT IT WAS A DEFECT BUT WHEN I REQUESTED REIMBURSEMENT GM DENIED THAT THE DEALER EVER TOLD THEM THIS. I BELIEVE GM IS DENYING THAT THERE ARE SOME STRUCTURAL PROBLEMS WITH THIS YEAR AND MODEL AND MY FEAR IS THAT ANOTHER YEAR DOWN THE ROAD THERE WILL BE OTHER ISSUES WITH THE FRAME/BODY OF THIS MODEL VEHICLE. ALSO, IT BOTHERS ME THAT WE ARE ENCOURAGED TO "BUY AMERICAN" BUT THE AMERICAN CAR MAKERS DO NOT WANT TO STAND UP TO THEIR PROMISE OF GOOD MAKEMANSHIP. I AM DISAPPOINTED AND ESPECIALLY WITH THE DISHONESTY AT THE CORPORATE LEVEL OF THIS CORPORATION. *TR

- NHTSA Complaint: WE OWN A 2007 EQUINOX, OUR FRIEND STATED THAT HIS EQUINOX HAD WATER IN THE SPARE TIRE COMPARTMENT. WE HAVE BEEN GETIING SICK FOR A WHILE AND DIDN'T KNOW WHY. WE LOOKED IN OUR SPARE TIRE COMPARTMENT AND THERE WAS A FOOT OF WATER. NOW WE CANNOT DRIVE THIS VEHICLE FOR HEALTH REASONS. GM KNEW ABOUT THIS PROBLEM FOR THERE ARE 3 SERVICE BULLETINS FOR THIS PROBLEM. THEY WILL NOT HELP US WITH A TRADE ASSIST AND WE CANNOT DRIVE IT DUE TO THE MOLD. WE HAVE CONDENSATION IN THE INSIDE OF THE VEHICLE AND HAVE TO WIPE IT OFF WITH A TOWEL BEFORE WE CAN DRIVE IT. THE VEHICLE IS FULL OF MOLD! I'M SURE THIS VEHICLE HAS BEEN LEAKING SINCE DAY ONE! *TR

- Internet Posting: • 2007 Pontiac Torrent, water in the spare tire well, been to dealer 4 times, still leaks, 1st & 2nd time replaced a tail light, 3rd time sealed seam in rear panel, 4th time sealed wire grommets at the top of rear door & removed both taillights to seal some body seams. Will not leak with a water hose, only when it rains.
- Internet Posting: my 07 equinox is also getting water in the tire well but they dont know where the leak is coming from
- Internet Posting: My 2006 Equinox leaks from the driver side near the Hood release I have to keep towels down when it rains. any suggestions??????? In washington state where it rains all the time is not good-.
- Internet Posting: good luck, I have a 07 Equinox and after taking it to the dealership and them sending it out for repair and fixing 9-10 leaks..... I still have water under the spare tire... Also major concern for mold buildup in my carpet. . . . I'm sooooooooo tired of having to deal with this. . . . that was one of the 9 or 10 leaks they have fixed so far. thanks for sharing . . . . here's an update ... I now have a lemon law atty. we are waiting for better business bureau to inspect my vehicle. I have purchased a mold kit and will put it in the car tomarrow. I have been back and forth to the doctor soooo many times lately. They now think I have asthma due to being around mold ... hmm wonder where I could have been around mold ..... my doctor advised me not to drive my car anymore .. GM does not want to do anything about this, I am so sick of this, Now my car is parked under a car cover. Gatta love paying for a car note and insurance on something I cannot drive, I have made it my goal to make sure every equinox I see driving around knows to check for this issue .. , hopefully I can catch them before their warranty wears out.

- Internet Posting: I CANT STOP CRYING!! i have about ten gallons of standing water in my tire well and the dealer ship just sent me to a "water work place" it will cost me 1,000 dollars ..insurance will not cover it will take 4days to fix it. It will cost 180.00 to rent a car. I have no radio the water damage blew my amp located under back seats so i have to that fixed!! no one can just empty out the water till i come up with this lump sum of money
- Internet Posting: the dealership that we bought the car from is saying that our warranty doesnt cover the leak. I told the service dude to look online to see how many other equinoxes have this SAME problem, but he didnt care, He said that since there isnt a Government recall, they cant do anything. He thought that $1000,00 was a good price to pay to seal the rubber part up. Are you freaking kidding me .. , um no thanks, So if any of you got your warranty to cover this ... I just want to know how.

42. Customers have reported the water leak defect in the Class Vehicles to Defendant directly and through its dealers. Defendant is fully aware of the water leak defect in the Class Vehicles. Despite this, Defendant has actively concealed the existence and nature of the defect from Plaintiff and the Class Members at the time of purchase or lease and thereafter. Specifically, Defendant has:

a. failed to disclose, at and after the time of purchase or lease and repair, any and all known material defects or material nonconformity of the Class Vehicles, including the water leak defect of the Class Vehicles and its associated repair costs;

b. failed to disclose at the time of purchase or lease that the Class Vehicles, including the water leak defect of the Class Vehicles,

were not in good working order, were defective, and were not fit for their intended purpose; and

c. failed to disclose or actively concealed the fact that the Class Vehicles had a water leak defect, despite the fact that Defendant learned of such defects through consumer complaints, as well as other internal sources, as early as 2005, if not before.

43. Defendant has caused Plaintiff and Class Members to expend money at its dealerships or other third-party facilities to clean, repair, replace parts and/or take other remedial measures related to the water leak defect of the Class Vehicles, as well as to repair or replace items damaged by water leaks and flooding resulting from the water leak defect, despite Defendant's knowledge of the water leak defect.

44. Further, Defendant has caused Plaintiff and Class Members to expend money professionally cleaning the Class Vehicles, as well as to find alternative means of transportation due to loss of use of the Class Vehicles.

45. Defendant has not recalled the Class Vehicles to repair the defect, has not offered to its customers a suitable repair or replacement of parts free of charge related to the water leak defect, has not offered to reimburse Class Vehicle owners and leaseholders who incurred costs relating to repairs related to the water leak defect, and has not offered to reimburse Class Members any other costs associated with repairing or addressing problems caused by the water leak defect.

46. The Class Members have not received the value for which they bargained for when they purchased or leased the Class Vehicles.

47. As a result of the defect, the value of the Class Vehicles has diminished, including without limitation their resale values.

VIOLATION OF CALIFORNIA SECRET WARRANTY LAW

48. Defendant has violated, and continues to violate, California Civil Code section 1795.90 *et seq.* (the "California Secret Warranty Law"). The California Secret Warranty Law was enacted to abolish "secret" warranties. The term "secret warranty" is used to describe the practice by which an automaker establishes a policy to pay for repair of a defect without making the defect or the policy known to the public at large. A secret warranty is usually created when the automaker realizes that a large number of its customers are experiencing a defect not covered by a factory warranty, and decides to offer warranty coverage to individual customers only if, for example, the customer complains about the problem first. The warranty is considered "secret" because all owners are not notified of it. Instead, the automaker usually issues a TSB to its regional offices and/or dealers on how to deal with the defect, although a TSB or other formal document is not necessary to create a secret warranty. Because owners are kept in the dark about the cost-free repair, the automaker only has to reimburse those consumers who complain loudly enough; the quiet consumer either does not fix the problem or pays to fix the defect by himself or herself.

49. Defendant is a "manufacturer" as that term is defined by section 1795.50 of the California Secret Warranty Law. Section 1795.2 of the California Secret Warranty Law imposes several duties on auto manufacturers like Defendant, each of which is designed to do away with secret warranties.

50. Plaintiff and members of the proposed Class are consumers as that term is defined by section 1795.90(a) of the California Secret Warranty Law. The California Secret Warranty law requires automakers to notify consumers, by first-class mail, within 90 days of adoption, whenever they enact "any program or policy that expands or extends the consumer's warranty beyond its stated limit or under which [the] manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing,

any condition that may substantially effect vehicle durability, reliability, or performance . . . ."

51. The California Secret Warranty Law also requires automakers to provide the New Motor Vehicle Board with a copy of the notice described above, so the public can view, inspect, or copy that notice.

52. Additionally, the California Secret Warranty Law requires automakers to advise their dealers, in writing, of the terms and conditions of any warranty extension, adjustment, or reimbursement program.

53. The California Secret Warranty Law also requires an automaker to "implement procedures to assure reimbursement of each consumer eligible under an adjustment program who incurs expenses for repair of a condition subject to the program prior to acquiring knowledge of the program."

54. In 2008, Defendant issued a TSB. The TSB describes the numerous water leak defects suffered by the Class Vehicles:

a. Water may be entering from top of the strut tower into the driver side and or passenger side floor.

b. Water may be entering through the seams in the floor pan on the driver side and/or passenger side.

c. Water may be entering through the liftgate weatherstrip.

d. Water may be entering between the liftgate and the weatherstrip.

e. Water may be entering through a gap in the sealer at the rear D-pillar (roof to body).

f. Water in spare tire.

g. Water in the rear compartment.

The TSB also describes the numerous possible causes of those water leak defects:

a. Water may be entering from top of the strut tower into the driver side and or passenger side floor.

b. Water may be entering through the seams in the floor pan on the driver side and/or passenger side.

c. Water may be entering through the liftgate weatherstrip.

d. Water may be entering between the liftgate and the weatherstrip.

e. Water may be entering through a gap in the sealer at the rear D-pillar (roof to body).

f. Water may be entering through a gap in the sealer behind the rear fascia.

g. Water may be entering through a gap in the sheet metal behind the tail lamps.

Finally, the TSB describes the various temporary fixes for the water leak defects:

a. Reseal the strut tower. Use 3M(TM) Ultrapro Autobody Sealant Clear or equivalent.

b. Remove the carpet and reseal the sheet metal seam.

c. Remove the weatherstrip and reseal the sheet metal.

d. Adjust the liftgate. Refer to Liftgate Adjustment in SI.

e. Remove the roof rack and inspect for any voids in the sealant. Refer to Luggage Carrier Replacement Equinox or Torrent in SI. Use 3M™ Ultrapro Autobody Sealant Clear or equivalent.

f. Remove the rear fascia and reseal the sheet metal seam. Refer to Rear Bumper Fascia Replacement in SI.

g. Remove the tail lamps. Refer to Tail Lamp Replacement in SI and reseal the sheet metal seam.

55. The TSB further states: "Important: IF A MILDEW ODOR IS PRESENT IN THE VEHICLE, REFER TO PIT4535." (emphasis in original).

56. Plaintiff is informed and believes and based thereon alleges that the free water leak defect repairs outlined in Defendant's secret TSB is applicable to all Class Vehicles.

57. Defendant does not typically pay for repairing the water leak defect under its new car warranty (or any other warranty) because Defendant considers water leaks to be the result of outside influences and, therefore, not covered by Defendant's express warranty. In fact, Defendant or Defendant's authorized dealers for vehicle repairs typically tell consumers that the water leak defect is as a result of an outside influence and not covered under warranty.[2] Thus, by extending its warranties to cover repair of the water leak defect, Defendant has "expand[ed] or extend[ed] the consumer's warranty beyond its stated limit."

58. Additionally, the vehicle performance problems that the TSB resealing and/or replacement procedures are intended to address "substantially affect the vehicle durability, reliability, or performance." These problems include, but are not limited to, engine failure, electrical system failure, as well as water damage to interior components of the vehicles and tail lights, and rust. Therefore, the offers to provide free repair of the water leak defect are "adjustment programs" within the meaning of the California Secret Warranty Law.

59. Plaintiff is informed and believes and based thereon alleges that Defendant has also extended its warranty in another way; namely, by employing a secret policy to pay for the water leak defect related damage of those consumers

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[2] For example, a GM consumer explained GM's refusal to provide warranty coverage this way:

> The dealership that we bought the car from is saying that our warranty doesnt cover the leak. I told the service dude to look online to see how many other equinoxes have this SAME problem, but he didnt care, He said that since there isnt a Government recall, they cant do anything. He thought that $1000,00 was a good price to pay to seal the rubber part up. Are you freaking kidding me .. , um no thanks, So if any of you got your warranty to cover this ... I just want to know how.

who complain loudly enough. The decision to offer this free repair outside the vehicle's New Car Warranty is not done on an *ad hoc* basis. Rather, it is made pursuant to a systematic policy—communicated to *inter alia*, regional offices, dealers, and GM customer care personnel—to pacify the most vocal consumers so as to preserve Defendant's reputation. Upon information and belief, the code names for these policies, include but are not limited to good will adjustments or policy adjustments.[3]

60. Again, water leaks are not normally included in the warranty coverage. Thus, by extending its warranties to cover the water leak defect and/or related damage, Defendant has "expand[ed] or extend[ed] the consumer's warranty beyond its stated limit." Thus, Defendant's temporary repair and/or repair of damage constitutes an adjustment program under the Secret Warranty Law and constitutes an offer to pay for or to reimburse consumers for the cost of repairing a condition that substantially affects vehicle durability, reliability, or performance.

61. As a result of the foregoing, Defendant is obligated to comply with the provisions of the California Secret Warranty Law with respect to its resealing, replacing, repairing, and reimbursement offers. It has not done so.

62. Specifically, Defendant did not notify Plaintiff, or any other owner or lessee of a Class Vehicle, of their right to free repair of the water leak defect and consequent damage, or to be reimbursed for the cost of repairing the water leak defect and consequent damage (*e.g.*, replacement of interior carpets, as well as other components within the vehicle damaged by the water leak defect).

63. Defendant has also refused to provide the free water leak repair, replacement or reimbursement to owners or lessees of affected vehicles who have

[3] For example, Defendant refused to replace Plaintiff's indoor carpets, while at the same time it has reimbursed or replaced such items for other consumers who complain loudly enough for the same and/or similar items.

specifically requested it. Moreover, even though Defendant is aware of fixes for this problem, Defendant has refused to notify Plaintiff, or any other owner or lessee of a Class Vehicle, of these available fixes and has refused to reimburse owners or lessees of Class Vehicles for the consequent damages that the water leak defect causes.

64. Additionally, Defendant has refused to reimburse consumers who have paid to repair the water leak defect and/or paid for damage resulting from the water leak defect.

65. Upon information and belief, Defendant did not comply with the dealer-notification provisions of the California Secret Warranty Law.

66. Upon information and belief, Defendant has also failed to comply with the New Motor Vehicle Board notification procedures.

TOLLING OF THE STATUTE OF LIMITATIONS

67. Since the defects in the design or manufacture of the Class Vehicles resulting in water leaks cannot be detected until the defect manifests, Plaintiff and Class Members were not reasonably able to discover the problem until long after purchasing or leasing the Class Vehicles, despite their exercise of due diligence.

68. Plaintiff and Class Members had no realistic ability to discern the water leak defect until water leaks occurred, and in some instances, until long after the water leaks occurred, and/or until a moldy smell resulted from the water leaks. In addition, despite their due diligence, Plaintiff and Class Members could not reasonably have been expected to learn or discover that they were deceived and that material information concerning the water leak defect was concealed from them, until manifestation of the defect. Therefore, the discovery rule is applicable to the claims asserted by Plaintiff and the Class Members.

69. Upon information and belief, Defendant has known of the structural defects contained in the Class Vehicles since at least 2005, if not earlier, and has

concealed from or failed to alert owners and lessees of the Class Vehicles of the water leak defect.

70. Any applicable statutes of limitation have therefore been tolled by Defendant's concealment and denial of the facts alleged here. Defendant is further estopped from relying on any statutes of limitation because of its concealment of the defective nature of the Class Vehicles.

CLASS ACTION ALLEGATIONS

71. Plaintiff brings this lawsuit as a class action on behalf of himself and all other California residents similarly situated as members of a proposed Plaintiff Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

72. The Class and Sub-Class is defined as:

Class: All persons in the State of California who purchased or leased a Chevrolet Equinox for the model years 2005-2009 or a Pontiac Torrent of any type for the model years 2006-2009.

Sub-Class: All Members of the Class who are "consumers" within the meaning of California Civil Code section 1761(d) ("the CLR Sub-Class").

Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest of Defendant, and Defendant's legal representatives, assigns, and successors. Also excluded is the judge to whom this case is assigned, as well as any member of the judge's immediate family.

73. Claims for personal injury are specifically excluded from the Class.

74. Plaintiff reserves the right to amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-Class should be expanded or otherwise limited.

75. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single class action will provide substantial benefits to all parties and to the Court.

76. Typicality: The claims of the representative Plaintiff is typical of the claims of the Class in that the representative Plaintiff, like all Class Members, owns a Class Vehicle designed and manufactured by Defendant that has the water leak defect. The representative Plaintiff, like all Class Members, has been damaged by Defendant's misconduct in that he has incurred or will incur the cost of repairing the water leak defect or repairing damage caused by the defective water leak defect. Furthermore, the factual basis of Defendant's misconduct are common to all Class Members and represent a common thread of fraudulent, deliberate, and negligent misconduct resulting in injury to all Members of the Class.

77. Commonality: There are numerous questions of law and fact common to Plaintiff and the Class which predominate over any questions affecting only individual Class Members. These common legal and factual issues include the following.

a. Whether the Class Vehicles are defectively designed or manufactured such that they are not suitable for their intended use;

b. Whether Defendant knew or should have known of the inherent design or manufacturing defect in its Class Vehicles;

c. Whether Defendant fraudulently concealed from or failed to disclose to Plaintiff and the Class the inherent problems with its Class Vehicles;

d. Whether Defendant had a duty to Plaintiff and the Class to disclose the inherent problems with its Class Vehicles;

e. Whether the facts concealed or not disclosed by Defendant to Plaintiff and the Class are material;

f. Whether as a result of Defendant's concealment of or failure to disclose material facts, Plaintiff and the Class acted to their detriment by purchasing Class Vehicles manufactured by Defendant;

g. Whether Defendant failed to adequately warn Plaintiff and the Class regarding the limitations of its Class Vehicle;

h. Whether Defendant engaged in unfair competition or unfair deceptive acts or practices when it concealed the limitations and failed to warn Plaintiff and Class Members of the defects in its Class Vehicles;

i. Whether Defendant's conduct in marketing, selling, and leasing its Class Vehicles constitutes a violation of the Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*;

j. Whether Defendant's conduct in marketing, selling, and leasing its Class Vehicles constitutes a violation of the Unfair Business Practices Act, California Business & Professions Code section 17200 *et seq.*;

k. Whether resealing the water leak defect under Defendant's clandestine TSB program is an "adjustment program" under the Secret Warranty Law;

l. Whether Defendant breached its implied warranties in that the Class Vehicles were defectively designed and or manufactured;

m. Whether Defendant should be declared financially responsible for notifying all Class Members of the problems with its Class Vehicles and for the costs and expenses of repair and replacement of the Class Vehicles;

n. Whether Plaintiff and the Class are entitled to replacement of parts related to the water leak defect;

78. Adequate Representation: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions—specifically actions involving defective products. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the Class.

79. Predominance and Superiority: Plaintiff and the Members of the Class have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Member's claims, it is likely that only a few Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages and Defendant's misconduct will continue without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

FIRST CLAIM FOR RELIEF

(Violation of California's Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*)

80. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

81. Plaintiff brings this cause of action against Defendant on behalf of himself and on behalf of the Members of the CLRA Sub-Class.

82. Defendant is a "person" as defined by Civil Code section 1761(c).

83. Plaintiff and Class Members are consumers who purchased or leased the Class Vehicles.

84. By failing to disclose and concealing the water leak defect, Defendant violated Civil Code section 1770(a), as it represented that its Class Vehicles had characteristics and benefits that they do not have, and represented that its Class Vehicles were of a particular standard, quality or grade when they were of another. (*See* Civ. Code §§ 1770(a)(5) & (7).)

85. Defendant's unfair or deceptive acts or practices occurred repeatedly in Defendant's trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

86. Defendant knew that its Class Vehicles were defectively designed or manufactured, would fail prematurely, and were not suitable for their intended use.

87. Defendant was under a duty to Plaintiff and the Class to disclose the defective nature of the Class Vehicles:

a. Defendant was in a superior position to know the true state of facts about the safety defect and associated repair costs in the Class Vehicles;

b. Plaintiff and the Class Members could not reasonably have been expected to learn or discover that the Class Vehicles had a dangerous safety defect until manifestation of the failure; and

c. Defendant knew that Plaintiff and the Class Members could not reasonably have been expected to learn or discover the safety defect and the associated repair costs that it causes.

88. In failing to disclose the water leak defect and the associated repair costs that it causes, Defendant has knowingly and intentionally concealed material facts and breached its duty not to do so.

89. The facts concealed or not disclosed by Defendant to Plaintiff and the Class are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase Defendant's Class Vehicles or pay a lesser price. Had Plaintiff and the Class known the defective nature of the Class Vehicles, they would not have purchased the Class Vehicles or would have paid less for them.

90. Plaintiff and the Class reasonably expected the Class Vehicles to function properly and not to experience water leaks inside the interior cabin for the life of their vehicles. That is the reasonable and objective consumer expectation.

91. As a direct and proximate result of Defendant's unfair or deceptive acts or practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

92. Plaintiff and the Class are also entitled to equitable and injunctive relief.

93. Plaintiff has provided Defendant with notice of its alleged violations of the CLRA pursuant to Civil Code section 1782(a). If, within 30 days of the date of the notification letter, Defendant fails to provide appropriate relief for its

violation of the CLRA, Plaintiff will amend this Complaint to seek monetary, compensatory, and punitive damages, in addition to injunctive and equitable relief.

SECOND CLAIM FOR RELIEF

(Violation of California's Unfair Business Practices Act, California Business & Professions Code section 17200 *et seq.* – Violations of California's Secret Warranty Law)

94. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

95. Plaintiff brings this cause of action on behalf of himself and on behalf of the Members of the Class.

96. By committing the acts and practices alleged herein, Defendant violated the Secret Warranty Law, and by doing so, has engaged in deceptive, unfair, and unlawful business practices in violation of the Unfair Competition Law ("UCL"), California Business & Professions Code section 17200 *et seq.*

97. Defendant's violation of the Secret Warranty Law (hence the UCL) continues to this day. As a direct and proximate result of Defendant's violations of the Secret Warranty Law, hence the UCL, Plaintiff and Class Members have suffered damages related to the water leak defect.

98. Pursuant to section 17203 of the UCL, Plaintiff and Class Members seek an order of this Court requiring Defendant to comply with the terms of the California Secret Warranty Law by: (a) notifying Class Members of the secret program for repairing the water leak defect and reimbursing for damage caused by the water leak defect as required by the California Secret Warranty Law; (b) providing free repairs, modifications, corrections, and/or replacements to all Class Members as required by the Secret Warranty Law; (c) identifying and reimbursing all Class Members who have made payments related to the water leak defect as required by the Secret Warranty Law; (d) notifying California dealers of the facts underlying the water leak defect and the terms of the secret program for repairing

the water leak defect and reimbursing for damage caused by the water leak defect as required by the Secret Warranty Law; and (e) notifying the California New Motor Vehicle Board of the secret program for repairing the water leak defect and reimbursing for damage caused by the water leak defect as required by the Secret Warranty Law.

99. Plaintiff and Class Members also seek an order: (a) enjoining Defendant from failing and refusing to make full restitution of all moneys wrongfully obtained as a result of its violations of the California Secret Warranty Law, and (b) disgorging to Plaintiff and Class Members all ill-gotten revenues and/or profits earned as a result of Defendant's violation of the California Secret Warranty Law, plus an award of attorneys' fees and costs. This is because Defendant profited from its sale of replacement parts to mechanics and dealers because they ultimately replaced, repaired, corrected, or modified the defective and/or replacement parts related to the water leak defect and damage caused by the water leak defect.

THIRD CLAIM FOR RELIEF

(Violation of UCL other than Violation of the Secret Warranty Law, California's Unfair Business Practices Act, California Business & Professions Code section 17200 *et seq.*)

100. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

101. Plaintiff brings this cause of action against Defendant on behalf of himself and on behalf of the Members of the Class.

102. California Business & Professions Code section 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

103. Defendant knew its Class Vehicles were defectively designed or manufactured, would fail prematurely, and were not suitable for their intended use.

104. Defendant concealed and failed to disclose to Plaintiff and the Class the defective nature of the Class Vehicles:

a. Defendant was in a superior position to know the true state of facts about the safety defects contained in the Class Vehicles;

b. Defendant made partial disclosures about the quality of the Class Vehicles without revealing that they were defective and highly prone to water leakage and flooding; and

c. Defendant actively concealed the defective nature of the Class Vehicles from Plaintiff and the Class.

105. In failing to disclose the water leak defect, Defendant has knowingly and intentionally concealed material facts and breached its duty not to do so.

106. The facts concealed or not disclosed by Defendant to Plaintiff and the Class are material in that a reasonable person would have considered them to be important in deciding whether to purchase the Class Vehicles or pay a lesser price for them. Had Plaintiff and the Class known about the defective nature of the Class Vehicles, they would not have purchased the Class Vehicles or would have paid less for them.

107. Defendant continues to conceal the defective nature of the Class Vehicles even after Class Members began to report problems. Indeed, Defendant continues to cover up and conceal the true nature of the problem until this date.

108. By its conduct alleged herein, Defendant has engaged in unfair competition and unlawful, unfair, and fraudulent business acts and practices.

109. Defendant's unfair or deceptive acts or practices occurred repeatedly in Defendant's trade or business, and were capable of deceiving a substantial portion of the purchasing public.

110. As a direct and proximate result of Defendant's unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

111. Defendant has been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to sections 17203 and 17204 of the California Business & Professions Code.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty Act, California Civil Code sections 1792 and 1791.1 *et. seq.*)

112. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

113. Plaintiff brings this cause of action against Defendant on behalf of himself and on behalf of the Members of the Class.

114. Defendant was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the Class Vehicles. Defendant knew or had reason to know of the specific use for which the Class Vehicles were purchased.

115. Defendant provided Plaintiff and Class Members with an implied warranty that the Class Vehicles are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles are defective due to the water leak defect and the resulting safety-related and health hazards that it can cause.

116. Plaintiff and other Class Members never contemplated that their vehicles would be unable to withstand water (*e.g.*, from rain or a carwash), eventually become flooded, and be subject to the series of associated problems. Plaintiff relied on implied warranties of merchantability made by Defendant concerning the Class Vehicles and sustained substantial damages resulting from the breach of those warranties by the Defendant. Plaintiff could not have

reasonably discovered the design defects of the Class Vehicles. Defendant's breach of its implied warranties of merchantability was the direct and proximate cause of Plaintiff's and the Class Members' damages.

117. Plaintiff and Class Members purchased the Class Vehicles within the State of California. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and fit for such use. This implied warranty included, among other things: (a) a warranty that the Class Vehicles were manufactured, supplied, distributed, and/or sold by Defendant were safe for providing safe and reliable transportation; and (b) a warranty that the Class Vehicles would be fit for their intended use and would not experience flooding as a result of the water leak defect when they are driven within their range of operation and during foreseeable and normal usage.

118. Contrary to the applicable implied warranties, the Class Vehicles are not fit for their ordinary and intended purpose of providing Plaintiff and the Class Members durable and safe transportation during normal and/or foreseeable usage. Instead, the Class Vehicles are defective, which defects include, but are not limited to, the water leak defect.

119. Defendant's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use in violation of California Civil Code sections 1792 and 1791.1.

RELIEF REQUESTED

120. Plaintiff, on behalf of himself and all others similarly situated, requests the Court enter judgment against Defendant, as follows

a. An order certifying the proposed Plaintiff Class, designating Plaintiff as the named representative of the Class and designating the undersigned as Class Counsel;

b. A declaration that Defendant is financially responsible for notifying all Class Members of the problems with its Class Vehicles and their water leak defect;

c. An order requiring Defendant to comply with the Secret Warranty Law by (i) notifying Class Members of the secret repairing of the water leak defect, and the secret repair, replacement, and reimbursement for water leak defect related damage, as required by the California Secret Warranty Law; (ii) providing free replacement, modification, and correction related to the water leak defect to all Class Members as required by the Secret Warranty Law; (iii) identifying and reimbursing all Class Members who have paid for repairing the water leak defect, replacement of parts related to the water leak defect, and repair or replacement for damage caused as a result of the water leak defect, as required by the Secret Warranty Law; (iv) notifying California dealers of the facts underlying the water leak defect problems and the terms of GM's secret water leak defect repair program, and the repair, replacement, and reimbursement for water leak defect related damage, as required by the Secret Warranty Law; and (iv) notifying the California New Motor Vehicle Board of GM's secret water leak defect repair program, and the secret repair, replacement, and reimbursement for water leak defect related damage, as required by the Secret Warranty Law;

d. An order enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to its Class Vehicles, and to repair the water leak defect and any damage caused by the water leak defect;

e. An award to Plaintiff and the Class of compensatory, statutory and punitive damages, including interest, in an amount to be proven at trial, except that for now, Plaintiff seeks only equitable and injunctive relief with respect to his claims under California's Consumer's Legal Remedies Act, California Civil Code section 1750 *et seq.*

f. An award to Plaintiff and the Class of all incidental and consequential damages, including interest, which have resulted from Defendant's breach of their implied warranties;

g. Any and all remedies provided pursuant to the Song-Beverly Act, including California Civil Code section 1794;

h. A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles, or to make full restitution to Plaintiff and the Class Members;

i. An award of attorneys' fees and costs pursuant to California Code of Civil Procedure section 1021.5, the common fund theory, or any other applicable statute, theory, or contract;

j. An award of pre-judgment and post-judgment interest, as provided by law;

k. Leave to amend the Complaint to conform to the evidence produced at trial; and

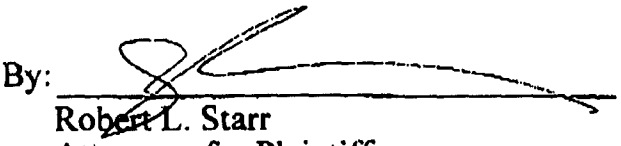
l. Such other or further relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

121. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: April 12, 2010

THE LAW OFFICE OF ROBERT L. STARR

By: 

Robert L. Starr
Attorneys for Plaintiff

EXHIBIT 1

Robert L. Starr (State Bar No. 183052)
e-mail: starresq@hotmail.com
THE LAW OFFICE OF ROBERT L. STARR
23277 Ventura Boulevard
Woodland Hills, California, 91364-1002
Telephone: (818) 225-9040
Facsimile: (310) 225-9042

Attorneys for Plaintiff Rodolpho F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLPHO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

Case Number:

DECLARATION OF ROBERT L. STARR

DECLARATION OF ROBERT L. STARR

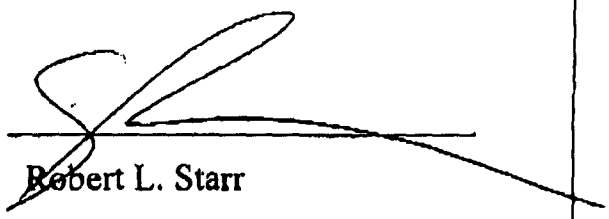
I, Robert L. Starr, declare as follows:

1. I am an attorney at law duly licensed to practice before this Court. I am a member of the law firm the Law Office of Robert L. Starr, counsel of record for Plaintiff in this action. The following facts are within my personal knowledge, and if called as a witness, I could and would competently testify thereto.

2. To the best of my knowledge, based on information and belief, Defendant General Motors, LLC is a Delaware Limited Liability Company with its principal place of business in Michigan. Defendant conducts business in the State of California, County of Los Angeles, and is domiciled at 818 West Seventh St., Los Angeles, California, 90017.

Executed on this 9th day of April, 2010, at Woodland Hills, California.

I declare under penalty of perjury that the foregoing is true and correct.



Robert L. Starr

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge A. Howard Matz and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV10- 2683 AHM (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Robert L. Starr (SBN: 183052), The Law Offices of Robert L. Starr, 23277 Ventura Blvd., Woodland Hills, CA 91364, (818) 225-9040

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Rodolfo Fidel Mendoza, individually, and on behalf of a class of similarly situated individuals, PLAINTIFF(S) v. General Motors, LLC, DEFENDANT(S).	CASE NUMBER AHM VBKx CV10 2683 **SUMMONS**

TO: DEFENDANT(S): General Motors, LLC

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Robert L. Starr, whose address is 23277 Ventura Blvd., Woodland Hills, CA 91364-1002. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: APR 13 2010

By: CHRISTOPHER POWERS
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)	DEFENDANTS
Rodolfo Fidel Mendoza, individually, and on behalf of a class of similarly situated individuals	General Motors, LLC
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)	**Attorneys (If Known)**
The Law Office of Robert L. Starr, 23277 Ventura Boulevard, Woodland hills, CA 91364-1002 (818) 225-9040	

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☑ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☑ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☑ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☑ Yes ☐ No ☑ MONEY DEMANDED IN COMPLAINT: $ greater than $5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 USC section 1332 (diversity): Class Action pursuant to CAFA with causes of action for violations of California consumer protection statutes

VII. NATURE OF SUIT (Place an X in one box only.)

☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/ Exchange ☐ 875 Customer Challenge 12 USC 3410 ☑ 890 Other Statutory Actions ☐ 891 Agricultural Act ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Info. Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes	☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise **REAL PROPERTY** ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	**PERSONAL INJURY** ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Fed. Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury-Med Malpractice ☐ 365 Personal Injury-Product Liability ☐ 368 Asbestos Personal Injury Product Liability **IMMIGRATION** ☐ 462 Naturalization Application ☐ 463 Habeas Corpus-Alien Detainee ☐ 465 Other Immigration Actions	**PERSONAL PROPERTY** ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability **BANKRUPTCY** ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 **CIVIL RIGHTS** ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 American with Disabilities - Employment ☐ 446 American with Disabilities - Other ☐ 440 Other Civil Rights	**PRISONER PETITIONS** ☐ 510 Motions to Vacate Sentence Habeas Corpus ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus/ Other ☐ 550 Civil Rights ☐ 555 Prison Condition **FORFEITURE/ PENALTY** ☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs ☐ 660 Occupational Safety /Health ☐ 690 Other	**LABOR** ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act **PROPERTY RIGHTS** ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark **SOCIAL SECURITY** ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) **FEDERAL TAX SUITS** ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS-Third Party 26 USC 7609

CV10 2683

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☑ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Rodolfo Fidel Mendoza - Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
General Motors, LLC - Los Angeles County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date 4/9/10

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) OR PARTY IF
DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER

Robert L. Starr, The Law Office of Robert L. Starr, 23277 Ventrual Blvd., Woodland Hills, CA, 91364-1002 (818) 225-9040

ATTORNEYS FOR: Plaintiff Rodolfo Fidel Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Rodolfo Fidel Mendoza, individually, and on behalf of a class of similarly situated individuals, Plaintiff(s), v. General Motors, LLC, Defendant(s)	CASE NUMBER CV10 2683 AHM VBKx **CERTIFICATION AND NOTICE OF INTERESTED PARTIES (Local Rule 7.1-1)**

TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for Plaintiff Rodolfo Fidel Mendoza (or party appearing in pro per), certifies that the following listed party (or parties) has (have) a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal. (Use additional sheet if necessary.)

PARTY (List the names of all such parties and identify their connection and interest.)	CONNECTION
Rodolfo Fidel Mendoza	Plaintiff
General Motors, LLC	Defendant

4/9/10
Date

Sign

Robert L. Starr
Attorney of record for or party appearing in pro per

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RODOLFO FIDEL MENDOZA, Plaintiff, v. GENERAL MOTORS, LLC, Defendant.	CASE NO. CV 10-2683 AHM (VBKx) INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ

COUNSEL FOR PLAINTIFF SHALL SERVE THIS ORDER ON ALL DEFENDANTS AND/OR THEIR COUNSEL ALONG WITH THE SUMMONS AND COMPLAINT, OR IF THAT IS NOT PRACTICABLE AS SOON AS POSSIBLE THEREAFTER. IF THIS CASE WAS ASSIGNED TO THIS COURT AFTER BEING REMOVED FROM STATE COURT, THE DEFENDANT WHO REMOVED THE CASE SHALL SERVE THIS ORDER ON ALL OTHER PARTIES.

This case has been assigned to the calendar of Judge A. Howard Matz. Judge Matz is intent on assuring that, as called for in Fed.R.Civ. P. 1, this case will proceed so as "to secure [a] just, speedy and inexpensive determination . . ." The parties are hereby informed of how they are expected to proceed.

A. THE COURT'S ORDERS

Copies of Judge Matz's orders that may have specific application to this case are available on the Central District of California website. See ¶ J. Those orders include the following (this is not necessarily a complete list):

(1) Order Setting Rule 16(b) Scheduling Conference

(2) Scheduling and Case Management Order

(3) Order re Protective Orders and Treatment of Confidential Information

(4) Orders (separate) re Civil Jury Trials and Court Trials

(5) Order re Settlement Conference Before This Court

B. SERVICE OF PLEADINGS

Although Fed.R.Civ.P. 4(m) does not require the summons and complaint to be served for as much as 120 days, the Court expects that they will be served much sooner than that, and will require plaintiff to show cause before then if it appears that there is undue delay.

C. ASSIGNMENT TO A MAGISTRATE JUDGE

Under 28 U.S.C. § 636, the parties may consent to have a Magistrate Judge preside over all proceedings, including trial. The Magistrate Judges who accept those designations are identified on the Central District's website, which also contains the consent form. See ¶ K.

D. APPLICATIONS AND STIPULATIONS FOR EXTENSIONS OF TIME

A. Applications or Stipulations to Extend the Time to File any Required Document or to Continue any Pretrial or Trial Date.

No stipulations extending scheduling requirements or modifying applicable rules are effective until and unless the Court approves them. Both applications and stipulations must set forth:

1. the existing due date or hearing date;

2. specific, concrete reasons supporting good cause for granting the extension. In this regard, a statement that an extension "will promote settlement" is insufficient. The requesting party or parties must indicate the status of ongoing negotiations: have written proposals been exchanged? Is counsel in the process of reviewing a draft settlement agreement? Has a mediator been selected?

3. whether there have been prior requests for extensions, and whether these were granted or denied by the Court.

E. TRO'S AND INJUNCTIONS

Parties seeking emergency or provisional relief shall comply with F.R.Civ.P. 65 and Local Rule 65. The Court will not rule on any application for such relief for at least 24 hours after the party subject to the requested order has been served; such party may file opposing or responding papers in the interim. The parties shall lodge a courtesy copy, conformed to reflect that it has been filed, of all papers relating to TROs and injunctions. The courtesy copy shall be placed in the drop box in the entrance way to chambers, to the left of Courtroom 14. All such papers shall be filed "loose" - - *i.e.*, not inside envelopes.

F. CASES REMOVED FROM STATE COURT

All documents filed in state court, including documents appended to the complaint, answers and motions, must be refiled in this Court as a supplement to the Notice of Renewal, if not already included. *See* 28 U.S.C. § 1447(a)(b). If the defendant has not yet answered or moved, the answer or responsive pleading filed in this Court must comply with the Federal Rules of Civil Procedure and the Local Rules of the Central District. If before the case was removed a motion was pending in state court, it must be re-noticed in accordance with Local Rule 7.

/ / /

G. STATUS OF FICTITIOUSLY NAMED DEFENDANTS

This Court intends to adhere to the following procedures where a matter is removed to this Court on diversity grounds with fictitiously named defendants referred to in the complaint. (*See* 28 U.S.C. ¶¶ 1441(a) and 1447.)

1. Plaintiff is normally expected to ascertain the identity of and serve any fictitiously named defendants within 120 days of the removal of the action to this Court.

2. If plaintiff believes (by reason of the necessity for discovery or otherwise) that fictitiously named defendants cannot be fully identified within the 120-day period, an *ex parte* application requesting permission to extend that period to effectuate service may be filed with this Court. Such application shall state the reasons therefor, and may be granted upon a showing of good cause. The *ex parte* application shall be served upon all appearing parties, and shall state that appearing parties may comment within seven (7) days of the filing of the *ex parte* application.

3. If plaintiff desires to substitute a named defendant for one of the fictitiously named parties, plaintiff first shall seek to obtain consent from counsel for the previously-identified defendants (and counsel for the fictitiously named party, if that party has separate counsel). If consent is withheld or denied, plaintiff may apply *ex parte* requesting such amendment, with notice to all appearing parties. Each party shall have seven calendar days to respond. The *ex parte* application and any response should comment not only on the substitution of the named party for a fictitiously named defendant, but on the question of whether the matter should thereafter be remanded to the Superior Court if diversity of citizenship is destroyed by the addition of the new substituted party. *See* U.S.C. § 1447(c)(d).

/ / /

/ / /

H. BANKRUPTCY APPEALS

Counsel shall comply with the ORDER RE PROCEDURE TO BE FOLLOWED IN APPEAL FROM BANKRUPTCY COURT issued at the time the appeal is filed in the District Court. The matter is considered submitted upon the filing of the appellant's reply brief. No oral argument is held unless otherwise ordered by this Court.

I. MOTIONS UNDER FED.R.CIV.P. 12

Many motions to dismiss or to strike could be avoided if the parties confer in good faith (as they are required to do under L.R. 7-3), especially for perceived defects in a complaint, answer or counterclaim which could be corrected by amendment. *See Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996) (where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by *any* amendment). Moreover, a party has the right to amend his complaint "once as a matter of course at any time before a responsive pleading is served." Fed.R.Civ.P. 15(a). A 12(b)(6) motion is not a responsive pleading and therefore plaintiff might have a right to amend. *See Nolen v. Fitzharris*, 450 F.2d 958, 958-59 (9th Cir. 1971); *St. Michael's Convalescent Hospital v. California*, 643 F.2d 1369, 1374 (9th Cir. 1981). And even where a party has amended his Complaint once or a responsive pleading has been served, the Federal Rules provide that leave to amend should be "freely given when justice so requires." F.R.Civ.P. 15(a). The Ninth Circuit requires that this policy favoring amendment be applied with "extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). These principles require that counsel for the plaintiff should carefully evaluate the defendant's contentions as to the deficiencies in the complaint and that in many instances the defendant (or moving party) should agree to any amendment that would cure a curable defect.

/ / /

In the unlikely event that motions under Fed.R.Civ.P. 12 challenging pleadings are filed after the Rule 16(b) Scheduling Conference, the moving party shall attach a copy of the challenged pleading to the Memorandum of Points and Authorities in support of the motion.

The foregoing provisions apply as well to motions to dismiss a counterclaim, answer or affirmative defense, which a plaintiff might contemplate bringing.

J. COURTESY COPIES AND COMPUTER DISKS

Courtesy copies are required for all e-filed documents and must be delivered to the drop box in the entrance way to chambers, to the left of Courtroom 14, located at 312 N. Spring Street, Spring Street level, no later than noon the following business day. In addition, courtesy copies of manually filed documents are required when: (1) reply papers are filed late; or (2) emergency circumstances make them essential -- e.g., for TROs, ex parte applications or papers filed during trial or within two days of a scheduled hearing, pre-trial conference or trial. When the Court requires an electronic version of any document be submitted (e.g., with summary judgment papers or proposed jury instructions), that Word/WordPerfect formatted document should be emailed to the court clerk at stephen_montes@cacd.uscourts.gov. Counsel should avoid leaving extra copies of voluminous documents with chambers when they are not necessary to comply with this paragraph.

K. ELECTRONIC FILING

All documents which are required to be filed in an electronic format pursuant to General Order No. 08-02 must be filed electronically no later than midnight on the date due, unless otherwise ordered by the Court. Documents filed late may be stricken by the Court. The Court will not accept documents which were filed electronically, but which otherwise fail to comply with filing requirements.

Courtesy Paper Copies. Unless otherwise ordered, courtesy paper copies of all electronically filed documents must be delivered to the courtesy box outside chambers no later than 12:00 noon the following business day. The courtesy paper copies must comply with Local Rule 11-3, i.e., blue backed, font size, page numbering, tabbed exhibits, etc., unless otherwise directed. IF A DOCUMENT CONTAINS EXHIBITS THAT ARE NOT TABBED, THE COURT MAY DECLINE TO READ THE EXHIBITS. The courtesy paper copy must be prominently labeled COURTESY COPY on the face page. The courtesy paper copy must include the Notice of Electronic Filing, which should be the last page of the document. The court's CM/ECF website contains additional instructions for delivery of courtesy copies.

It would benefit the Court, and thus would be in counsel's interest, for counsel seeking any kind of expedited relief, such as by an *Ex Parte* Application or an application for a Temporary Restraining Order, to deliver the courtesy paper copies to chambers *immediately* after the applicable filed document(s) have been filed.

L. WEBSITE

Copies of this Order and other orders of this Court are available on the Central District of California's website, at "www.cacd.uscourts.gov," under "Judge's Requirements."

The Court thanks counsel and the parties for their anticipated cooperation.

IT IS SO ORDERED.

Dated: April 14, 2010

A. HOWARD MATZ
United States District Judge

Robert L. Starr (State Bar No. 183052)
e-mail: starresq@hotmail.com
THE LAW OFFICE OF ROBERT L. STARR
23277 Ventura Boulevard
Woodland Hills, California, 91364-1002
Telephone: (818) 225-9040
Facsimile: (310) 225-9042

Attorneys for Plaintiff Rodolpho F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLPHO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals, Plaintiff, v. GENERAL MOTORS, LLC, Defendant.	CV10 2683 AHM VBKx Case Number: **DEMAND FOR JURY TRIAL**

TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Plaintiff Rodolfo Fidel Mendoza hereby demands a trial by jury.

Dated: April 8, 2010

THE LAW OFFICE OF ROBERT L. STARR

By: _____

Robert L. Starr
Attorney for Plaintiff

Robert L. Starr, Esq. (SBN 183052)
Law Offices of Robert L. Starr
23277 Ventura Blvd
Woodland Hills, CA 91364
(818) 225-9040
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Rodolfo Fidel Mendoza PLAINTIFF(S) v. General Motors, LLC. DEFENDANT(S).	CASE NUMBER CV102683 AHMVBKx **PROOF OF SERVICE** **SUMMONS AND COMPLAINT** (Use separate proof of service for each person/party served)

1. At the time of service I was at least 18 years of age and not a party to this action and **I served** copies of the (*specify documents*):

☑ summons ☐ first amended complaint ☐ third party complaint
☑ complaint ☐ second amended complaint ☐ counter claim
☐ alias summons ☐ third amended complaint ☐ cross claim

☑ other: (*specify*): Declaration; Notice of Assignment to United States Magistrate Judge for Discovery; Demand for Jury Trial; Civil Cover Sheet; Notice of Interested Parties

2. **Person served**:
   a. ☑ Defendant (*name*): General Motors, LLC.
   b. ☑ Other (*specify name and title or relationship to the party/business named*):
      Maria Sanchez (Agent for Service of Process @ CT Corporation)
   c. ☑ Address where papers were served:
      818 W 7th St, 2nd Floor, Los Angeles, CA 90017-3407

3. **Manner of Service** in compliance with (one box **must** be checked):
   a. ☐ Federal Rules of Civil Procedure
   b. ☑ California Code of Civil Procedure

4. **I served** the person named in Item 2:
   a. ☑ By **Personal service.** By personally delivering copies. If the person is a minor, by leaving copies with a parent, guardian, conservator or similar fiduciary and to the minor if at least twelve (12) years of age.
      1. ☑ **Papers were served on** (*date*): 4/27/10 at (*time*): 1:05pm.
   b. ☐ By **Substituted service.** By leaving copies:
      1. ☐ (**home**) at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household, at least 18 years of age, who was informed of the general nature of the papers.
      2. ☐ (**business**) or a person apparently in charge of the office of place of business, at least 18 years of age, who was informed of the general nature of the papers.
      3. ☐ **papers were served on** (*date*): _____ at (*time*): _____.
      4. ☐ **by mailing** (by first-class mail, postage prepaid) copies to the person served in Item 2(b) at the place where the copies were left in Item 2(c).
      5. ☐ **papers were mailed on** (*date*): _____.
      6. ☐ **due diligence.** I made at least three (3) attempts to personally serve the defendant. **(Attach separate declaration regarding due diligence).**
   c. ☐ **Mail and acknowledgment of service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, with two (2) copies of the form of Waiver of Service of Summons and Complaint and a return envelope, postage prepaid addressed to the sender. **(Attach completed Waiver of Service of Summons and Complaint).**

d. ☐ **Service on domestic corporation, unincorporated association (including partnership), or public entity (F.R.Civ.P. 4(h)) (C.C.P. 416.10).** By delivering, during usual business hours, a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also mailing, by first-class mail, postage prepaid, a copy to the defendant.

e. ☐ **Substituted service on domestic corporation, unincorporated association (including partnership), or public entity (C.C.P. 415.20 only).** By leaving during usual office hours, a copy of the summons and complaint in the office of the person served with the person who apparently was in charge and thereafter by mailing (by first-class mail, postage prepaid) copies to the persons at the place where the copies were left in full compliance with C.C.P. 415.20. Substitute service upon the California Secretary of State requires a court order. **(Attach a copy of the order to this Proof of Service).**

f. ☐ **Service on a foreign corporation.** In any manner prescribed for individuals by F.R.Civ.P. 4(f).

g. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. **(Attach signed return receipt or other evidence of actual receipt by the person served).**

h. ☐ **Other** (specify code section and type of service):

5. Service upon the **United States, and Its Agencies, Corporations or Officers.**
   a. ☐ by delivering a copy of the summons and complaint to the clerical employee designated by the U.S. Attorney authorized to accept service, pursuant to the procedures for the Office of the U.S. Attorney for acceptance of service, or by sending a copy of the summons and complaint by registered or certified mail addressed to the civil process clerk at the U.S. Attorneys Office.

      Name of person served:

      Title of person served:

      Date and time of service: (*date*): _____ at (*time*): _____.

   b. ☐ By sending a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States at Washington, D.C. **(Attach signed return receipt or other evidence of actual receipt by the person served).**
   c. ☐ By sending a copy of the summons and complaint by registered or certified mail to the officer, agency or corporation **(Attach signed return receipt or other evidence of actual receipt by the person served).**

6. At the time of service I was at least 18 years of age and not a party to this action.

7. Person serving (name, address and telephone number):

   Norbert Mendez
   Attorney Related Services, Inc.
   15335 Morrison St, Ste 104
   Sherman Oaks, CA 91403-1566
   (818) 995-9771

   a. ☑ Fee for service: $ 42.00
   b. ☐ Not a registered California process server
   c. ☐ Exempt from registration B&P 22350(b)
   d. ☑ Registered California process server

8. ☐ I am a California sheriff, marshal, or constable and I certify that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

4/27/10
Date

N. Mendez
Signature

GREGORY R. OXFORD (S.B. #62333)
goxford@icclawfirm.com
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, an individual, and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendants.

Case No. CV 10- 2683 AHM (VBK)

STIPULATION TO EXTEND TIME TO RESPOND TO INITIAL COMPLAINT BY NO MORE THAN THIRTY DAYS (L.R. 8.3)

Complaint Served: May 1, 2010
Current Response Date: May 21, 2010
New Response Date: June 21, 2010

WHEREAS, defendant General Motors LLC ("GM" or "General Motors") was served with the summons and complaint herein on May 1, 2010 and its response is presently due on May 21, 2010:

WHEREAS, counsel for GM has requested an additional thirty (30) days to respond to the complaint pursuant to L.R. 8-3 and counsel for plaintiff has agreed to this request,

IT IS HEREBY STIPULATED, by and between plaintiff and GM, by and through their undersigned counsel of record, that GM pursuant to L.R. 8-3 may have until Monday, June 21, 2010 to answer, move or otherwise respond to the complaint herein.

DATED: May 12, 2010

ROBERT L. STARR
THE LAW OFFICE OF ROBERT L. STARR

By: Robert L. Starr/GO

Attorneys for Plaintiff
Rudolfo F. Mendoza

DATED: May 12, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: Greg R Oxford

Attorneys for Defendant
General Motors LLC

Robert L. Starr (State Bar No. 183052)
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Facsimile: (310) 693-9083

Attorneys for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

Case No.: 10-2683 AHM (VBK)

Judge: Hon. A. Howard Matz
Courtroom: 14

NOTICE OF ASSOCIATION OF COUNSEL

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Dara Tabesh, Esq., at 201 Spear St. Ste. 1100, San Francisco, CA, 94105, hereby associates with The Law Office of Robert L. Starr, 23277 Ventura Boulevard, Woodland Hills, California, 91364-1002, on behalf of Rodolfo Fidel Mendoza, individually, and on behalf of a class of similarly situated individuals.

Plaintiff respectfully requests that the service list and the Court's records be changed to reflect the addition of Dara Tabesh as counsel for Plaintiffs and all Class Members, and that all future communications regarding this case for Plaintiff be also directed to the attention of Dara Tabesh at:

Dara Tabesh
201 Spear St. Ste. 1100
San Francisco, CA 94105
Telephone: (415) 595-9208
Facsimile: (310) 693-9083
DTabesh@hotmail.com

Respectfully submitted,

Dated: June 17, 2010 THE LAW OFFICE OF ROBERT L. STARR

By: /s/ Robert L. Starr
Robert L. Starr
Attorneys for Plaintiff Rodolfo Fidel Mendoza, individually, and on behalf of a class of similarly situated individuals

I hereby agree to the above association.

Dated: June 17, 2010 By: /s/ Dara Tabesh
Dara Tabesh
Attorney for Plaintiff Rodolfo Fidel Mendoza, individually, and on behalf of a class of similarly situated individuals

Robert L. Starr (State Bar No. 183052)
e-mail: starresq@hotmail.com
THE LAW OFFICE OF ROBERT L. STARR
23277 Ventura Boulevard
Woodland Hills, California, 91364-1002
Telephone: (818) 225-9040
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Attorney for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

STIPULATION RE: FILING OF PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT AND DEFENDANT'S RESPONSE

Plaintiff Rodolfo Fidel Mendoza ("Plaintiff") and General Motors, LLC ("GM"), through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, Plaintiff served a Class Action Complaint ("complaint") in the matter captioned *Mendoza et al. v. General Motors, LLC* (Case No. CV-10-2683 AHM (VBK)) on GM on or about May 1, 2010;

WHEREAS, by stipulation between the parties (Docket No. 6), GM's response to the complaint currently is due on or before June 21, 2010;

WHEREAS, GM currently plans to file a motion to dismiss or, in the alternative, transfer this action to the United States District Court for the Southern District of New York for referral to the Bankruptcy Court pursuant to 28 U.S.C. § 1412 on June 21, 2010;

WHEREAS, the parties have met and conferred prior to the filing of GM's motion as required by Local Rule 7-3;

WHEREAS, after meeting and conferring with GM's counsel, counsel for Plaintiff intends to file a First Amended Class Action Complaint in an attempt to cure certain deficiencies in the complaint;

WHEREAS, GM anticipates that, following the filing of the First Amended Class Action Complaint, it will file a motion to dismiss that complaint or, in the alternative, transfer this action to the United State District Court for the Southern District of New York pursuant to 28 U.S.C. § 1412 ("motion to dismiss or transfer");

WHEREAS, the parties have discussed and agreed upon a mutually agreeable hearing date and briefing schedule for GM's motion to dismiss or transfer;

NOW THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE, through their respective counsel of record, that the Court subject to the convenience of its calendar may enter its order as follows:

1. Plaintiff will file his First Amended Class Action Complaint by July 16, 2010;
2. GM will file its motion to dismiss or transfer by August 16, 2010;
3. Plaintiff will file his opposition to GM's motion by September 6, 2010;
4. GM will file its reply in support of its motion by September 20, 2010;
5. GM's motion shall be scheduled for hearing on September 27, 2010, at 10 a.m., Courtroom 14, in the Central District of California, Western Division.

DATED: June 17, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: /s/
Gregory R. Oxford
Attorneys for General Motors, LLC

DATED: June 17, 2010

ROBERT L. STARR
THE LAW OFFICE OF ROBERT L. STARR

By: /s/
Robert L. Starr
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MARTIN EHRLICH, individually and on behalf of a class of similarly situated individuals, Plaintiff, v. BMW OF NORTH AMERICA, LLC, Defendant.	CASE NO. CV 10-2683 AHM (VBK) Hon. A. Howard Matz **[PROPOSED] ORDER RE: FILING OF PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT AND DEFENDANT'S RESPONSE**

The Court has reviewed and considered the parties' June 17, 2010 Stipulation re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Plaintiff will file his First Amended Class Action Complaint by July 16, 2010;
2. GM will file its motion to dismiss or transfer by August 16, 2010;
3. Plaintiff will file his opposition to GM's motion by September 6, 2010;
4. GM will file its reply in support of its motion by September 20, 2010;
5. GM's motion shall be scheduled for hearing on September 27, 2010, at 10 a.m., Courtroom 14, in the Central District of California, Western Division.

It is so ordered.

DATED: June _, 2010

Hon. A. Howard Matz
United States District Court Judge

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Attorney for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

STIPULATION TO CONTINUE DEADLINE FOR FILING CLASS CERTIFICATION MOTION

Plaintiff Rodolfo Fidel Mendoza ("Plaintiff") and General Motors, LLC ("GM"), through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, Plaintiff served a Class Action Complaint ("complaint") in the matter captioned *Mendoza et al. v. General Motors, LLC* (Case No. CV-10-2683 AHM (VBK)) on GM on or about May 1, 2010;

WHEREAS, GM's response to the complaint by stipulation of the parties currently is due on or before June 21, 2010;

WHEREAS, pursuant to Central District Local Rule 23-3, Plaintiff is required to file his Motion for Class Certification by July 30, 2010, which is ninety (90) days from the service of the complaint;

WHEREAS, GM currently anticipates that it will file a motion to dismiss and/or a motion to transfer to the Southern District of New York on or before June 21, 2010;

WHEREAS, it is highly unlikely that the complaint will be at issue on the date Plaintiff's class certification motion currently is due on July 30, 2010;

WHEREAS, the Court has not yet set a Rule 26 scheduling conference in this matter and discovery is not likely to commence under governing Federal Rules and Central District Local Rules until after the parties' mutual exchange of initial disclosures and Rule 16 meeting of counsel;

WHEREAS, the Court has not issued an order changing the deadline for a class certification motion under Central District Local Rule 23-3, and additional time is necessary to resolve GM's anticipated challenges to Plaintiff's complaint, and to initiate and complete pre-certification discovery;

IT IS HEREBY STIPULATED AND AGREED that the Court may enter an order continuing the July 30, 2010 deadline for Plaintiff to file a Motion for Class Certification, and at the initial case scheduling conference, the Court can set a briefing schedule for class certification as agreed to by the parties or as ordered by the Court.

DATED: June 17, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: /s/
Gregory R. Oxford
Attorneys for General Motors, LLC

DATED: June 17, 2010

ROBERT L. STARR
THE LAW OFFICE OF ROBERT L. STARR

By: /s/
Robert L. Starr
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MARTIN EHRLICH, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

[PROPOSED] ORDER CONTINUING DEADLINE FOR FILING CLASS CERTIFICATION MOTION

The Court has reviewed and considered the parties' June 17, 2010 Stipulation To Continue Deadline For Filing Class Certification Motion ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that Plaintiff's July 31, 2010 deadline for filing a motion for class certification pursuant to Central District Local Rule 23-3 is hereby continued. At the initial case scheduling conference, the Court will establish a briefing schedule for class certification as agreed to by the parties, or as otherwise ordered by the Court.

DATED: June , 2010

Hon. A. Howard Matz
United States District Court Judge

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Attorney for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals, Plaintiff, v. GENERAL MOTORS, LLC, Defendant.	CASE NO. CV 10-2683 AHM (VBK) Hon. A. Howard Matz **NOTICE OF ERRATA**

Please take notice that the [Proposed] Order re: Stipulation to Continue Deadline for Filing Class Certification Motion, filed as an attachment to the above-captioned parties' Stipulation to Continue Deadline for Filing Class Certification Motion (Docket No. 9), was filed with an incorrectly labeled caption. Accompanying the filing of this Notice of Errata is the correct version of the [Proposed] Order Continuing Deadline for Filing Class Certification Motion.

DATED: June 17, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: /s/
Gregory R. Oxford
Attorneys for General Motors, LLC

DATED: June 17, 2010

ROBERT L. STARR
THE LAW OFFICE OF ROBERT L. STARR

By: /s/
Robert L. Starr
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

[PROPOSED] ORDER CONTINUING DEADLINE FOR FILING CLASS CERTIFICATION MOTION

The Court has reviewed and considered the parties' June 17, 2010 Stipulation To Continue Deadline For Filing Class Certification Motion ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that Plaintiff's July 31, 2010 deadline for filing a motion for class certification pursuant to Central District Local Rule 23-3 is hereby continued. At the initial case scheduling conference, the Court will establish a briefing schedule for class certification as agreed to by the parties, or as otherwise ordered by the Court.

DATED: June , 2010

Hon. A. Howard Matz
United States District Court Judge

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Attorney for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals, Plaintiff, v. GENERAL MOTORS, LLC, Defendant.	CASE NO. CV 10-2683 AHM (VBK) Hon. A. Howard Matz **NOTICE OF ERRATA**

Please take notice that the [Proposed] Order re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response, filed as an attachment to the above-captioned parties' Stipulation Re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response (Docket No. 8), was filed with an incorrectly labeled caption. Accompanying the filing of this Notice of Errata is the correct version of the [Proposed] Order re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response.

DATED: June 17, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: /s/
Gregory R. Oxford
Attorneys for General Motors, LLC

DATED: June 17, 2010

ROBERT L. STARR
THE LAW OFFICE OF ROBERT L. STARR

By: /s/
Robert L. Starr
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals, Plaintiff, v. GENERAL MOTORS, LLC, Defendant.	CASE NO. CV 10-2683 AHM (VBK) Hon. A. Howard Matz **[PROPOSED] ORDER RE: FILING OF PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT AND DEFENDANT'S RESPONSE**

The Court has reviewed and considered the parties' June 17, 2010 Stipulation re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Plaintiff will file his First Amended Class Action Complaint by July 16, 2010;
2. GM will file its motion to dismiss or transfer by August 16, 2010;
3. Plaintiff will file his opposition to GM's motion by September 6, 2010;
4. GM will file its reply in support of its motion by September 20, 2010;
5. GM's motion shall be scheduled for hearing on September 27, 2010, at 10 a.m., Courtroom 14, in the Central District of California, Western Division.

It is so ordered.

DATED: June _, 2010

Hon. A. Howard Matz
United States District Court Judge

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBKx)

Hon. A. Howard Matz

ORDER RE: FILING OF PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT AND DEFENDANT'S RESPONSE

The Court has reviewed and considered the parties' June 17, 2010 Stipulation re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Plaintiff will file his First Amended Class Action Complaint by July 16, 2010 at the Civil Intake Window, located at the United States District Court, 312 N. Spring Street, Los Angeles, California 90012;
2. GM will file its motion to dismiss or transfer by August 16, 2010;
3. Plaintiff will file his opposition to GM's motion by September 7, 2010;

4. GM will file its reply in support of its motion by September 20, 2010;

5. GM's motion shall be scheduled for hearing on September 27, 2010, at 10 a.m., Courtroom 14, in the Central District of California, Western Division.

It is so ordered.

DATED: June 18, 2010

Hon. A. Howard Matz
United States District Court Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals, Plaintiff, v. GENERAL MOTORS, LLC, Defendant.	CASE NO. CV 10-2683 AHM (VBKx) Hon. A. Howard Matz **ORDER CONTINUING DEADLINE FOR FILING CLASS CERTIFICATION MOTION**

The Court has reviewed and considered the parties' June 17, 2010 Stipulation To Continue Deadline For Filing Class Certification Motion ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that Plaintiff's July 31, 2010 deadline for filing a motion for class certification pursuant to Central District Local Rule 23-3 is hereby continued. At the initial case scheduling conference, the Court will establish a briefing schedule for class certification as agreed to by the parties, or as otherwise ordered by the Court.

DATED: June 18, 2010

Hon. A. Howard Matz
United States District Court Judge

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

FIRST AMENDED COMPLAINT FOR:

(1) Violations of California Consumer Legal Remedies Act

(2) Violations of Unfair Business Practices Act – Secret Warranty

(3) Violations of Unfair Business Practices Act

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff Rodolfo F. Mendoza ("Plaintiff") brings this action against General Motors, LLC ("GM" or "Defendant") on behalf of himself and all similarly situated persons ("Class Members") who purchased or leased a Chevrolet Equinox sport utility vehicle ("SUV") of model years 2005 to 2009 and Pontiac Torrent SUV of model years 2006 to 2009 (collectively, the "Class Vehicles").

2. On or about July 2009, Defendant acquired the assets of General Motors Corporation ("old GM") in a sales transaction that received the approval of the United States Bankruptcy Court for the Southern District of New York. In connection with this acquisition, Defendant assumed certain liabilities of old GM, including, among other things, all claims arising from accidents or other discrete incidents arising from operation of the Class Vehicles occurring subsequent to the closing date of the sales transaction, regardless of when the Class Vehicles were purchased. Defendant also agreed to comply with "the certification, reporting and recall requirement of National Traffic Motor Vehicle Safety Act . . . California Health and Safety Code and similar Laws,[1] in each case, to the extent applicable in respect of [Class] vehicles and [Class] vehicle parts manufactured or distributed by [Old GM]."

3. In or around the time it acquired the assets and assumed the liabilities of Old GM, if not before, Defendant knew or should have known that the Class Vehicles contain one or more design flaws and/or structural defects that causes them to be highly prone to water leaks and flooding (the "water leak defect"), including but not limited to water leaks that result in flooding of the trunk and

[1] The Master Sale & Purchase Agreement ("MPA") defines "Laws" as "any and all applicable United States or non-United States federal, national, provincial, state or local laws, rules, regulations, directives, decrees, treaties, provisions of any constitution and principles (including principles of common law) of any governmental authority, as well as any applicable Final Order."

spare tire well, water leaks that result in damage to the vehicles' front lights and taillights, as well as water leaks to the car's interior cabin, causing mold and electrical failure due to the water damaging the computer, electrical system, and interior components of the Class Vehicles.

4. Defendant also knew or should have known that the water leak defect presents a safety hazard and is unreasonably dangerous to consumers for several reasons. The water leak defect is dangerous because of the danger of catastrophic engine and/or electrical system failure as a result of the water damaging the vehicle's interior components while the vehicle is in operation. Thus, the flooding can cause engine failure, suddenly and unexpectedly, at anytime and under any driving condition or speed, thereby contributing to traffic accidents, which can result in personal injury or death.

5. The water leak defect is also known to cause tail lights to fail or malfunction. This creates an unreasonably dangerous situation for the driver and vehicles behind the driver that can potentially lead to rear-end accidents, or at the very least, can result in traffic violations, tickets, and increased insurance premiums for the Class Vehicles' drivers.

6. Further, the water leak defect is particularly dangerous in a relatively closed environment like that found inside an SUV such as the Class Vehicles (even more so when the air is being recycled) because it can promote mold growth. For example, when it rains or when the vehicle is washed, the failure of the Class Vehicles to prevent water from entering the vehicle causes the water to accumulate in the trunk and/or passenger compartment, causing mold (as well as bacteria and other contaminants) to infect the air of the car's interior cabin, thereby exposing Class Members, their passengers, and individuals with whom they come in contact to serious health risks.

7. Mold reproduces by generating spores that are released into the air, which then land on moist surfaces. They thrive in dark, warm, and moist

locations, such as inside trunks and under tire wells, under wet carpets, within the vehicles' interior cabins, and other such locations. Mold can trigger numerous health problems, including allergic reactions and asthma attacks. For example, exposure to these mold and other contaminants can cause difficulty breathing and headaches, as well as asthma and allergies, in those who would not otherwise have such health problems. These dangers are exacerbated by the fact that the mold and other contaminants can be transferred by touch to other surfaces separate from the vehicle. So, for example, if a passenger places an object in the trunk of a vehicle with mold, that mold can attach to the surface of that object and will be taken wherever that object is taken, *e.g.*, the home, the workplace, school, etc. Complaints from exposure to mold include, but are not limited to, flu-like symptoms, chronic fatigue syndrome, memory impairment, migraine headaches, sick-building syndrome, dizziness, and nosebleeds.[2]

8. The soaked interiors of Class Vehicles subject to the water leak defect are also extremely difficult to dry properly and are often prone to hazardous mold and odor, even after several detailed cleanings. Moreover, smaller, initial leaks, as well accumulation of water under the tire well—while still causing the same damage to the vehicles and their owners (*i.e.*, hazardous mold)—can sometimes go undetected for weeks.

9. In addition to safety hazards, the cost of the water leak defect to consumers can be exorbitant because consumers will be required to pay hundreds, if not thousands, of dollars both to repair the water leak defect and to repair the

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[2] These are the mild symptoms. Many researchers claim that mold can attack several main body systems, including the brain, the central nervous system, and the immune system. Mold has been the direct cause of some deaths. Asthmatics, infants, and individuals suffering immune system deficiencies are particularly susceptible to the deleterious effects of mold. People with asthma when exposed to strong concentrations of mold can literally die from such exposure.

extensive damage that it causes to the vehicle's flooring, carpeting, and electrical systems.

10. Plaintiff is informed and believes and based thereon alleges that as of July 2009, if not before, Defendant knew or should have known that the Class Vehicles are defective and not fit for their intended purpose of providing consumers with safe and reliable transportation. Nevertheless, Defendant has actively concealed and/or failed to disclose this defect from Plaintiff and the Class Members at the time of purchase, lease, or repair, and thereafter.

11. Plaintiff is informed and believes and based thereon alleges that as of July 2009, Defendant knew that Old GM had issued a secret technical service bulletin ("TSB") to its dealers acknowledging the existence of the water leak defect and implementing a cheaper, albeit temporary, fixe: mainly replacing and/or resealing (with a special "3M(TM) Ultrapro Autobody Sealant Clear or [its] equivalent") various structural components of the Class Vehicles that are defective, in part, because of insufficient, inadequate, or improperly applied body sealer.

12. Defendant also knew that Old GM had not disclosed the existence of the TSB to Plaintiff, prospective Class Members, or the California New Motor Vehicle Board, as is required by California's Secret Warranty Law. Defendant also knew that under the MPA and pursuant to California's Secret Warranty Law it had a duty (after its acquisition of Old GM's assets and liabilities) to immediately disclose the TSB to the various entities and failed to do so.

13. Instead, Defendant decided to attribute the water leaks to outside influences and refused to cover the problem under warranty, as it was required to do so under the MPA.[3]

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[3] Under the MPA, Defendant has agreed to assume "(A) all Liabilities arising under express written emission and limited new vehicle warranties, certified used vehicle warranties [which normally come with 6 years/100,000

14. Although it is true that Defendant normally attributes water leaks to outside influences and does not cover them under warranty, it nevertheless has instructed its dealers to perform the resealing and/or or replacement program at no cost to the consumer.

15. However, Defendant's clandestine program to temporarily fix the water leak defect with a special sealer was strictly limited to the most persistent customers and only those who visited the dealer and complained loudly enough about the problem. For example, when Plaintiff's daughter complained about the water leak defect, she was told by a GM authorized dealer that "it happens here all the time" and to "just air it out."

16. Plaintiff is informed and believes and based thereon alleges that if Defendant's secret, temporary fixes, including resealing of the various structural components of the Class Vehicles with the special sealer, are successful, the effect of these fixes only last long enough to ensure that the manifestation of the water leak defect occurs outside of warranty period, but they will not permanently remedy the problem. This ultimately leaves consumers with defective vehicles that are substantially certain to again experience the water leak defect, the consequent damage caused by water leaks, and the associated safety hazards.

17. Plaintiff is also informed and believes and based thereon alleges that Defendant is aware that replacing and/or resealing the various structural components of the Class Vehicles does not fix the water leak defect. However, Defendant continues to implement the replacing and/or resealing process simply to

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miles warranty], and pre-owned vehicle warranties delivered in connection with the sale of new, certified used or pre-owned vehicles manufactured or sold by [Old GM] or Purchaser prior to or after the Closing and (B) all Liabilities arising under express written emission and limited warranties and warranties with respect to new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions), manufactured or sold by [Old GM] or Purchaser," even if the vehicle was manufactured before the date of acquisition.

prolong the amount of time that will elapse before the water leak problem again manifests itself; thus, helping ensure that the water leak defect occurs outside of the warranty period so that Defendant can easily and unfairly shift financial responsibility for the water leak defect to Class Members.

18. Plaintiff is also informed and believes and based thereon alleges that to mollify those consumers who complain loudly enough, Defendant implemented another clandestine program to secretly reimburse or pay for repair costs of those Class Vehicles that suffer from the water leak defect and the related damage that it causes, even when the water leak defect and the related damage that it causes occurs outside the vehicle's 3-year/36,000-mile express warranty period. However, as with its secret TSB program, Defendant's secret repair and/or reimbursement program is also strictly limited to the most persistent customers who complain loudly enough. For example, Defendant refused to replace Plaintiff's indoor carpeting damaged by the water leak defect while agreeing to replace or reimburse the floor carpeting and other similar items which is similar to the manner in which Defendant deals with the most persistent customers who complain loudly enough.

19. Plaintiff is informed and believes and based thereon alleges that despite notice of the defect from numerous customer complaints, Defendant has not recalled the Class Vehicles to repair the defect, has not offered its customers a suitable repair or replacement free of charge, and has not offered to reimburse the Class Vehicles' owners and leaseholders the costs they incurred relating to repairing water leaks and the related damage that it causes, including but not limited to repairing or replacing electrical components and floor carpeting, detailed cleaning and drying, removal of foul odors, repairs from water damage, increased insurance premiums, vehicle rental costs, etc.

20. Defendant knew and concealed the defects that are contained in every Class Vehicle, along with the attendant dangerous safety problems and associated

repair costs, from Plaintiff and Class Members at the time of sale or repair and thereafter. Had Plaintiff and the Class Members known about these defects at the time of sale or repair, Plaintiff and the Class Members would not have purchased the vehicles; nor would they have repaired the Class Vehicles, because the temporary fixes do not repair the water leak defect. As a result of Defendant's actions, owners and/or lessees of the Class Vehicles have suffered ascertainable loss of money, property, and/or loss in value.

21. Additionally, as a result of the water leak defect in the Class Vehicles, Plaintiff and the Class Members have been harmed and have suffered actual damages in that the Class Vehicles are experiencing continuous, progressive, and repeated water leak defect problems and/or are substantially certain to experience water leak defect problems before their expected useful life has run.

PARTIES

Plaintiff:

22. Plaintiff Rodolfo Mendoza is a California citizen who lives in Los Angeles County, California. Mr. Mendoza purchased a used 2008 Chevrolet Equinox LS from Wondries Chevrolet on January 18, 2009. Mr. Mendoza purchased this vehicle primarily for his personal, family, or household purposes. This vehicle was manufactured, sold and warranted by Old GM, and bears the Vehicle Identification No. 2CNDL13F786001899.

23. In December 2009, with approximately 35,000 miles on the vehicle's odometer and after a week with a great deal of rainfall, Mr. Mendoza's daughter, Ms. Janet Mendoza, noticed a pungent odor emanating from the vehicle that caused her light headaches and breathing difficulties. A few days later when clearing out the back seat of the vehicle, Ms. Mendoza noticed that her file folders had fallen out and were wet. Upon further investigation, Ms. Mendoza noticed that the rear passenger and driver side seat of the vehicle were all wet.

24. On December 15, 2009, Ms. Mendoza brought the vehicle to an authorized GM dealer, complaining that there was a foul odor and that water was leaking inside the vehicle. In response, the dealer instructed Ms. Mendoza to "just air it out" and that "it happens here all the time." Not satisfied with this response, Ms. Mendoza visited another authorized GM dealer, who ultimately sent her to O'Donnell Chevrolet-Buick, GM's authorized dealer in San Gabriel, CA. The sales manager there inspected the vehicle, opened up the trunk, and showed Ms. Mendoza that (in addition to the interior of the vehicle) the spare tire pit in the trunk was also full of water.

25. O'Donnell Chevrolet did not provide Plaintiff with the fixes that Defendant had outlined in its clandestine TSB program to its dealers.

26. The GM dealer also confirmed that there was mold and an associated mildew odor in the vehicle but refused Plaintiff's request to replace the carpets.

27. When the vehicle was finally returned to Plaintiff and her daughter, the vehicle still smelled of mildew. In fact, Plaintiff's vehicle continues to experience problems associated with the water leak defect.

28. In addition to other damages, Plaintiff has incurred damages related to cleaning the interior carpets of the vehicle. Similarly, like other class members, Plaintiff has not received the fixes outlined in Defendant's secret TSB.

Defendant:

29. Defendant GM is a Delaware Limited Liability Company with its headquarters and principal place of business in the State of Michigan. Defendant does business in the state of California. Defendant designs, tests, manufactures, distributes, warrants, sells, and leases various vehicles under several prominent brand names, including but not limited to Chevrolet, GMC, GM, and Pontiac throughout the United States.

JURISDICTION

30. This is a class action.

31. Members of the proposed Plaintiff Class are citizen of California, a state different from the home state of Defendant.

32. On information and belief, the aggregate claims of individual Class Members exceed $5,000,000, exclusive of interest and costs.

33. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

VENUE

34. Defendant, through its business of distributing, selling, and leasing its Class Vehicles, has established sufficient contacts in this district such that it is subject to personal jurisdiction here. Defendant is deemed to reside in this district pursuant to 28 U.S.C. § 1391(a).

35. In addition, a substantial part of the events or omissions giving rise to these claims and a substantial part of the property that is the subject of this action are in this district.

36. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

APPLICABLE LAW

37. California State law applies to all claims in this action.

FACTUAL ALLEGATIONS

38. The Class Vehicles contain a water leak defect. This defect is substantially and unreasonably dangerous, as it can result in drivers of the Class Vehicles being exposed to hazardous contaminants, such as mold. Further, the water leak defect can lead to irreparable damage to electrical and mechanical components in the Class Vehicles, such as the front lights and tail lights, which creates a serious operational and safety concern to both the Class Vehicles' occupants and the public.

39. The water leak defect is also dangerous because of the danger of catastrophic engine and/or electrical system failure as a result of leaked water damaging the vehicle's interior components while the vehicle is in operation. Thus, the flooding can cause engine failure, suddenly and unexpectedly, at any

time and under any driving condition or at any speed, thereby contributing to traffic accidents, which can result in personal injury or death.

40. Plaintiff is informed and believes and based thereon alleges that Defendant acquired its knowledge of the water leak defect through internal sources not available to Class Members, including but not limited to Old GM's pre-release and other internal testing data, consumer complaints about the water leak defect that were made to both Old GM and Defendant, testing conducted in response to those complaints, aggregate data from Defendant's dealers, and from other internal sources.

41. Hundreds, if not thousands, of purchasers and lessees of the Class Vehicles have experienced problems with water leaks. Complaints filed by consumers with the NHTSA and posted on the Internet demonstrate that the defect is widespread and dangerous, and that it manifests without warning. The complaints also indicate Defendant's awareness of the defect and how potentially dangerous the defective condition is (note that spelling and grammar mistakes remain as found in the original):

- NHTSA Complaint: ON JAN. 11, 2010, I STARTED MY CAR TO LET IT WARM UP BEFORE LEAVING FOR WORK. I LET THE CAR RUN FOR ABOUT 10 MINUTES. DROVE THE 20 MINUTE DRIVE TO WORK, AND WHEN I GOT DOWNTOWN, THE CAR SHUT DOWN AND ALL OF THE WARNING LIGHTS ON THE DASHBOARD CAME ON. WAS ABLE TO COAST TO SIDE OF STREET AND STOP CAR. RESTARTED CAR AND PUT INTO DRIVE. ALL WARNING LIGHTS STILL ON, AND DON'T HAVE ANY POWER. WAS ABLE TO COAX CAR TO GO THREE BLOCKS TO PARKING LOT, AND CALLED DEALER WHO CAME AND GOT THE CAR. AFTER CHECKING, I WAS TOLD THAT WATER HAD LEAKED DOWN THE RIGHT FRONT

PASSENGER SIDE OF THE WINDOW, FREEZING, THAWING AND BACKING UP WHICH GOT TO THE WIRING AND BURNT IT OUT. REALLY GLAD THAT I WASN'T ON THE INTERSTATE THAT MORNING. *TR

- NHTSA Complaint: EQUINOX HAS HAD POWER FAILURE WHILE DRIVING 6+ TIMES...ALL WHEN DRIVING IN WET CONDITIONS (EITHER RAINING OR HAVING JUST RAINED). FIRST TIME WAS TOLD BY DEALERSHIP THAT I DROVE THRU A PUDDLE AND GOT EVERYTHING WET (I DIDN'T); HAD SOMETHING TO DO WITH THE ELECTRICAL SYSTEM REPLACED. HAVE TAKEN CAR BACK TO DEALER WITHIN THE LAST TWO MONTHS BECAUSE IT HAPPENED AGAIN, AND WAS TOLD ALL OF MY WEATHERSTRIPPING NEEDED REPLACING B/C THAT WAS ALLOWING WATER IN. HAD THIS DONE. HAPPENED AGAIN TONIGHT (WET WEATHER TODAY, BUT WAS NOT RAINING WHEN I WAS DRIVING). THE OTHER TIMES THIS HAS OCCURRED, I'VE LET MY EQUINOX SIT WHERE IT DIED FOR A FEW DAYS TO LET IT "DRY OUT" AND THAT HAS WORKED, BUT THIS NOT EXACTLY THE BEST SOLUTION AS I DON'T LIVE IN THE DESERT AND IT DOES RAIN HERE. CHEVY DEALER OF NO HELP; SAID HE AGREES THERE IS A MANUFACTURING DEFECT BUT THERE IS NOTHING HE CAN DO ABOUT IT. ADVISED ME TO CALL CHEVY CS. I HAVE DEALT WITH THEM BEFORE ON ANOTHER EQUINOX ISSUE AND THEY WERE OF NO HELP. WISH I WOULD HAVE INVESTIGATED MY STATE'S LEMON LAW IN TIME. SUDDEN AND TOTAL LOSS OF POWER IS DANGEROUS!! *TR

- NHTSA Complaint: EVERYTIME THAT I TAKE MY CAR IN FOR A QUICK CAR WASH OR IF IT RAINS REALLY HARD (IN FLORIDA IT DOES)... WATER LEAKS THROUGH THE LIGHTS IN THE CEILING, THE BACK HATCH, AND THROUGH THE FLOOR BOARDS. MY CHECK ENGINE LIGHT COMES ON AND THE DEALER TELLS ME THAT IT IS WATER CORROSION FROM THE WATER LEAKING THROUGH THE ELECTRICAL WIRING HARNESS. THIS CAUSES MY CAR TO RUN, EVEN THOUGH I HAVE MY PEDAL TO THE FLOOR, VERY SLOW. I CAN'T GO PAST 10MPH. I AM AFRAID OF ELECTRICAL FIRE. I CAN HARDLY TURN A CORNER... I AM AFRAID OF A CAR ACCIDENT. MY CAR IS ONLY 2 YEARS OLD NOW... 4/2008 AND THIS HAS HAPPENED A 3RD TIME. MY BATTERY HAS ALREADY HAD TO BE REPLACED AND MY RADIO REPLACED TWICE BECAUSE OF THE "CD CHANGER ERROR". NOW I CAN ONLY IMAGINE, WITH ALL OF THE WATER THAT KEEPS COMING IN, WHAT CONDITION MY CAR WILL BE IN A FEW MONTHS FROM NOW. ELECTRICAL PROBLEMS, BAD SMELL, CORRODING FLOOR BOARDS AND WHO KNOWS WHAT ELSE. *TR
- NHTSA Complaint: THE CONTACT STATED THAT WHILE DRIVING IN THE RAIN VEHICLE LOST POWER. THIS HAS HAPPENED SEVERAL TIMES WITHIN THE LAST 6 MONTHS. THE CONTACT TOOK THE VEHICLE TO THE DEALERSHIP TO BE SERVICED AND THEY HAVE NOT BEEN ABLE TO DIAGNOSIS THE FAILURE. *AK
- NHTSA Complaint: THE BACK FLOORBOARD OF MY CAR HAS BEEN NOTICABLY WET FOR A FEW MONTHS. MY CAR

IS OUT OF WARRANTY SO I BEGAN RESEARCHING ONLINE TO SEE WHAT MIGHT BE THE PROBLEM. THE SEALS AROUND THE DOORS WERE FINE. I DID FIND 3" OF WATER LAYING IN MY SPARE TIRE COMPARTMENT. THERE IS NO DRAIN HOLE FOR THE WATER TO BE REMOVED. THE WATER IS COMING IN FROM THE TAIL LIGHTS. THE DEALERSHIP I PURCHASED THE EQUINOX FROM SIMPLY LAUGHED AT THE PROBLEM AND SAID IT WOULD COST OVER $200 TO REPLACE JUST THE TAIL LIGHT. THE SMELL INSIDE OF THE VEHICLE IS HORRIBLE. IT IS OBVIOUSLY RUSTING THE BODY AND CAUSING MOLD AND MILDEW INSIDE THE VEHICLE. *TR

- NHTSA Complaint: I AM EXPERIENCING AN EXTREMELY STRONG MILDEW SMELL INSIDE MY EQUINOX. IT IS SO STRONG PEOPLE COMMENT OUTSIDE THE CAR. THE SMELL ALSO PENETRATES CLOTHING SO THAT OTHERS NOTICE THE SMELL. PEOPLE WILL NOT RIDE IN MY CAR. I HAVE HAD IT TO THE DEALER TWICE. BOTH TIMES THE ODOR IMPROVES SLIGHTLY (THEY DEPDORIZE THE HVAC) BUT STILL OTHERS COMMENT. I AM CONCERNED ABOUT DRIVING MY 3 YEAR OLD B/C OF THE SMELL. WE HAVE FOUND NO VISIBLE WETNESS OR MOLD. THE RUBBER AROUND TWO WINDOWS WAS LOOSE BUT THE DEALER DID NOT FIND WATER INSIDE THE DOOR. THE SMELL DOES NOT SEEM TO BE COMING FROM THE VENTS BUT MORES SO JUST FROM THE CAR. *NM
- NHTSA Complaint: . . . WATER SOAKING FLOOR BOARDS TWICE CAUSING MOLD & MILDEW . . . . *NM

- NHTSA Complaint: . . . THE CONSUMER HAD DRIVEN THROUGH A CAR WASH, THE DOME LIGHT HAD FILLED WITH WATER, THE LOWER DASH WAS DRIPPING WATER . . . . *SC *JB
- NHTSA Complaint: SPARE TIRE WELL UNDER THE FLOOR IN THE REAR OF MY EQUINOX FILLS WITH WATER. THIS MORNING IT HAD MORE THAN TWO INCHES. I DID NOT REALIZE THIS WAS HAPPENING AND I DO NOT KNOW WHERE IT IS COMING FROM. MY NEIGHBOR HAS THE SAME PROBLEM AS DOES HIS COWORKER (BOTH ARE FLEET VEHICLES). HE JUST TOLD ME ABOUT IT AND I LOOKED IN MINE. HE HAS GOTTEN A NEW COMPANY CAR AS HE WAS GETTING SICK FROM MOLD FROM THE LEAK.
- NHTSA Complaint: I HAD TO HAVE MY TRUNK COMPARTMENT REPLACED AND SOME AREAS AROUND THE FRAME OF THE BODY RE-SEALED DUE TO EXCESS WATER ACCUMULATING IN THE SPARE TIME AREA. I WAS FIRST TOLD BY THE DEALER REPAIR SHOP THAT IT WAS A DEFECT BUT WHEN I REQUESTED REIMBURSEMENT GM DENIED THAT THE DEALER EVER TOLD THEM THIS. I BELIEVE GM IS DENYING THAT THERE ARE SOME STRUCTURAL PROBLEMS WITH THIS YEAR AND MODEL AND MY FEAR IS THAT ANOTHER YEAR DOWN THE ROAD THERE WILL BE OTHER ISSUES WITH THE FRAME/BODY OF THIS MODEL VEHICLE. ALSO, IT BOTHERS ME THAT WE ARE ENCOURAGED TO "BUY AMERICAN" BUT THE AMERICAN CAR MAKERS DO NOT WANT TO STAND UP TO THEIR PROMISE OF GOOD MAKEMANSHIP. I AM

DISAPPOINTED AND ESPECIALLY WITH THE DISHONESTY AT THE CORPORATE LEVEL OF THIS CORPORATION. *TR

- NHTSA Complaint: WE OWN A 2007 EQUINOX, OUR FRIEND STATED THAT HIS EQUINOX HAD WATER IN THE SPARE TIRE COMPARTMENT. WE HAVE BEEN GETIING SICK FOR A WHILE AND DIDN'T KNOW WHY. WE LOOKED IN OUR SPARE TIRE COMPARTMENT AND THERE WAS A FOOT OF WATER. NOW WE CANNOT DRIVE THIS VEHICLE FOR HEALTH REASONS. GM KNEW ABOUT THIS PROBLEM FOR THERE ARE 3 SERVICE BULLETINS FOR THIS PROBLEM. THEY WILL NOT HELP US WITH A TRADE ASSIST AND WE CANNOT DRIVE IT DUE TO THE MOLD. WE HAVE CONDENSATION IN THE INSIDE OF THE VEHICLE AND HAVE TO WIPE IT OFF WITH A TOWEL BEFORE WE CAN DRIVE IT. THE VEHICLE IS FULL OF MOLD! I'M SURE THIS VEHICLE HAS BEEN LEAKING SINCE DAY ONE! *TR
- Internet Posting: • 2007 Pontiac Torrent, water in the spare tire well, been to dealer 4 times, still leaks, 1st & 2nd time replaced a tail light, 3rd time sealed seam in rear panel, 4th time sealed wire grommets at the top of rear door & removed both taillights to seal some body seams. Will not leak with a water hose, only when it rains.
- Internet Posting: my 07 equinox is also getting water in the tire well but they dont know where the leak is coming from
- Internet Posting: My 2006 Equinox leaks from the driver side near the Hood release I have to keep towels down when it rains. any suggestions??????? In washington state where it rains all the time is not good-.

- Internet Posting: good luck, I have a 07 Equinox and after taking it to the dealership and them sending it out for repair and fixing 9-10 leaks..... I still have water under the spare tire... Also major concern for mold buildup in my carpet. . . . I'm soooooooooo tired of having to deal with this. . . . that was one of the 9 or 10 leaks they have fixed so far. thanks for sharing . . . . here's an update ... I now have a lemon law atty. we are waiting for better business bureau to inspect my vehicle. I have purchased a mold kit and will put it in the car tomarrow. I have been back and forth to the doctor soooo many times lately. They now think I have asthma due to being around mold ... hmm wonder where I could have been around mold ..... my doctor advised me not to drive my car anymore .. GM does not want to do anything about this, I am so sick of this, Now my car is parked under a car cover. Gatta love paying for a car note and insurance on something I cannot drive, I have made it my goal to make sure every equinox I see driving around knows to check for this issue .. , hopefully I can catch them before their warranty wears out.
- Internet Posting: I CANT STOP CRYING!! i have about ten gallons of standing water in my tire well and the dealer ship just sent me to a "water work place" it will cost me 1,000 dollars ..insurance will not cover it will take 4days to fix it. It will cost 180.00 to rent a car. I have no radio the water damage blew my amp located under back seats so i have to that fixed!! no one can just empty out the water till i come up with this lump sum of money
- Internet Posting: the dealership that we bought the car from is saying that our warranty doesnt cover the leak. I told the service dude to look online to see how many other equinoxes have this SAME problem, but he didnt care, He said that since there isnt a Government

recall, they cant do anything. He thought that $1000,00 was a good price to pay to seal the rubber part up. Are you freaking kidding me .. , um no thanks, So if any of you got your warranty to cover this ... I just want to know how.

42. Customers have reported the water leak defect in the Class Vehicles to Defendant directly and through its dealers. Defendant is fully aware of the water leak defect in the Class Vehicles. Despite this, Defendant has actively concealed the existence and nature of the defect from Plaintiff and the Class Members at the time of purchase or repair and thereafter. Specifically, Defendant has:

a. failed to disclose, at and after the time of purchase or repair and thereafter, any and all known material defects or material nonconformity of the Class Vehicles, including the water leak defect of the Class Vehicles and its associated repair costs;

b. failed to disclose at the time of purchase or repair that the Class Vehicles, including the water leak defect of the Class Vehicles, were not in good working order, were defective, and were not fit for their intended purpose; and

c. failed to disclose or actively concealed the fact that the Class Vehicles had a water leak defect, despite the fact that Defendant learned of such defects through consumer complaints, as well as other internal sources, as early as July 2009, if not before.

43. Defendant has caused Plaintiff and Class Members to expend money at its dealerships or other third-party facilities to clean, repair, or replace parts and/or take other remedial measures related to the water leak defect of the Class Vehicles, as well as to repair or replace items damaged by water leaks and

flooding resulting from the water leak defect, despite Defendant's knowledge of the water leak defect.

44. Further, Defendant has caused Plaintiff and Class Members to expend money professionally cleaning the Class Vehicles, as well as to find alternative means of transportation due to loss of use of the Class Vehicles.

45. Defendant has not recalled the Class Vehicles to repair the defect, has not offered to its customers a suitable repair or replacement of parts free of charge related to the water leak defect, has not offered to reimburse Class Vehicle owners and leaseholders who incurred costs relating to repairs related to the water leak defect, and has not offered to reimburse Class Members any other costs associated with repairing or addressing problems caused by the water leak defect.

46. The Class Members have not received the value for which they bargained when they purchased or leased the Class Vehicles.

47. As a result of the defect, the value of the Class Vehicles has diminished, including without limitation their resale values.

VIOLATION OF CALIFORNIA SECRET WARRANTY LAW

48. Defendant has violated, and continues to violate, California Civil Code section 1795.90 *et seq.* (the "California Secret Warranty Law"). The California Secret Warranty Law was enacted to abolish "secret" warranties. The term "secret warranty" is used to describe the practice by which an automaker establishes a policy to pay for repair of a defect without making the defect or the policy known to the public at large. A secret warranty is usually created when the automaker realizes that a large number of its customers are experiencing a defect not covered by a factory warranty, and decides to offer warranty coverage to individual customers only if, for example, the customer complains about the problem first. The warranty is considered "secret" because all owners are not notified of it. Instead, the automaker may issue a TSB to its regional offices and/or dealers on how to deal with the defect, although a TSB or other formal

document is not necessary to create a secret warranty. Because owners are kept in the dark about the cost-free repair, the automaker only has to reimburse those consumers who complain loudly enough; the quiet consumer either does not fix the problem or pays to fix the defect by himself or herself.

49. Section 1795.2 of the California Secret Warranty Law imposes several duties on auto manufacturers like Defendant, each of which is designed to do away with secret warranties.

50. Plaintiff and members of the proposed Class are consumers as that term is defined by section 1795.90(a) of the California Secret Warranty Law. The California Secret Warranty law requires automakers to notify consumers, by first-class mail, within 90 days of adoption, whenever they adopt "any program or policy that expands or extends the consumer's warranty beyond its stated limit or under which [the] manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing, any condition that may substantially effect vehicle durability, reliability, or performance . . . ."[4]

51. The California Secret Warranty Law also requires automakers to provide the New Motor Vehicle Board with a copy of the notice described above, so the public can view, inspect, or copy that notice.

52. Additionally, the California Secret Warranty Law requires automakers to advise their dealers, in writing, of the terms and conditions of any warranty extension, adjustment, or reimbursement program.

53. The California Secret Warranty Law also requires an automaker to "implement procedures to assure reimbursement of each consumer eligible under

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[4] Plaintiff alleges that Defendant formally adopted the secret TSB, as well as the repair or replacement program for the water damaged components in or around July 2009.

an adjustment program who incurs expenses for repair of a condition subject to the program prior to acquiring knowledge of the program."

54. In or around July 2009, Defendant formally adopted TSB No. 08-08-57-001A. The TSB describes the numerous water leak defects suffered by the Class Vehicles:

a. Water may be entering from top of the strut tower into the driver side and or passenger side floor.

b. Water may be entering through the seams in the floor pan on the driver side and/or passenger side.

c. Water may be entering through the liftgate weatherstrip.

d. Water may be entering between the liftgate and the weatherstrip.

e. Water may be entering through a gap in the sealer at the rear D-pillar (roof to body).

f. Water in spare tire.

g. Water in the rear compartment.

The TSB also describes the numerous possible causes of those water leak defects:

a. Water may be entering from top of the strut tower into the driver side and or passenger side floor.

b. Water may be entering through the seams in the floor pan on the driver side and/or passenger side.

c. Water may be entering through the liftgate weatherstrip.

d. Water may be entering between the liftgate and the weatherstrip.

e. Water may be entering through a gap in the sealer at the rear D-pillar (roof to body).

f. Water may be entering through a gap in the sealer behind the rear fascia.

g. Water may be entering through a gap in the sheet metal behind the tail lamps.

Finally, the TSB describes the various temporary fixes for the water leak defects:

a. Reseal the strut tower. Use 3M(TM) Ultrapro Autobody Sealant Clear or equivalent.

b. Remove the carpet and reseal the sheet metal seam.

c. Remove the weatherstrip and reseal the sheet metal.

d. Adjust the liftgate. Refer to Liftgate Adjustment in SI.

e. Remove the roof rack and inspect for any voids in the sealant. Refer to Luggage Carrier Replacement Equinox or Torrent in SI. Use 3M™ Ultrapro Autobody Sealant Clear or equivalent.

f. Remove the rear fascia and reseal the sheet metal seam. Refer to Rear Bumper Fascia Replacement in SI.

g. Remove the tail lamps. Refer to Tail Lamp Replacement in SI and reseal the sheet metal seam.

55. The TSB further states: "Important: IF A MILDEW ODOR IS PRESENT IN THE VEHICLE, REFER TO PIT4535." (emphasis in original).

56. Plaintiff is informed and believes and based thereon alleges that the free water leak defect repairs outlined in Defendant's secret TSB is applicable to all Class Vehicles.

57. Defendant does not typically pay for repairing the water leak defect under its new car warranty (or any other warranty) because Defendant considers water leaks to be the result of outside influences and, therefore, not covered by Defendant's express warranty. In fact, Defendant or Defendant's authorized dealers for vehicle repairs typically tell consumers that the water leak defect is as a result of an outside influence and not covered under warranty.[5] Thus, by

[5] For example, a GM consumer explained GM's refusal to provide warranty coverage this way:

extending its warranties to cover repair of the water leak defect, Defendant has "expand[ed] or extend[ed] the consumer's warranty beyond its stated limit."

58. Additionally, the vehicle performance problems that the TSB resealing and/or replacement procedures are intended to address "substantially affect the vehicle durability, reliability, or performance." These problems include, but are not limited to, engine failure, electrical system failure, as well as water damage to interior components of the vehicles and tail lights, and rust. Therefore, the offers to provide free repair of the water leak defect are "adjustment programs" within the meaning of the California Secret Warranty Law.

59. Plaintiff is informed and believes and based thereon alleges that Defendant has also extended its warranty in another way; namely, by employing a secret policy to pay for the water leak defect related damage of those consumers who complain loudly enough. The decision to offer this free repair outside the vehicle's New Car Warranty is not done on an *ad hoc* basis. Rather, it is made pursuant to a systematic policy—communicated to *inter alia*, regional offices, dealers, and GM customer care personnel—to pacify the most vocal consumers so as to preserve Defendant's reputation. Upon information and belief, the code names for these policies, include but are not limited to good will adjustments or policy adjustments.[6]

60. Again, water leaks are not normally included in the warranty coverage. Thus, by extending its warranties to cover the water leak defect and/or

> The dealership that we bought the car from is saying that our warranty doesnt cover the leak. I told the service dude to look online to see how many other equinoxes have this SAME problem, but he didnt care, He said that since there isnt a Government recall, they cant do anything. He thought that $1000,00 was a good price to pay to seal the rubber part up. Are you freaking kidding me .. , um no thanks, So if any of you got your warranty to cover this ... I just want to know how.

[6] For example, Defendant refused to replace Plaintiff's indoor carpets, while at the same time it has reimbursed or replaced such items for other consumers who complain loudly enough for the same and/or similar items.

related damage, Defendant has "expand[ed] or extend[ed] the consumer's warranty beyond its stated limit." Thus, Defendant's temporary repair and/or repair of damage constitutes an adjustment program under the Secret Warranty Law and constitutes an offer to pay for or to reimburse consumers for the cost of repairing a condition that substantially affects vehicle durability, reliability, or performance.

61. As a result of the foregoing, Defendant is obligated to comply with the provisions of the California Secret Warranty Law with respect to its resealing, replacing, repairing, and reimbursement offers. It has not done so.

62. Specifically, Defendant did not notify Plaintiff, or any other owner or lessee of a Class Vehicle, of their right to free repair of the water leak defect and consequent damage, or to be reimbursed for the cost of repairing the water leak defect and consequent damage (*e.g.*, replacement of interior carpets, as well as other components within the vehicle damaged by the water leak defect).

63. Defendant has also refused to provide the free water leak repair, replacement or reimbursement to owners or lessees of affected vehicles who have specifically requested it. Moreover, even though Defendant is aware of fixes for this problem, Defendant has refused to notify Plaintiff, or any other owner or lessee of a Class Vehicle, of these available fixes and has refused to pay or reimburse owners or lessees of Class Vehicles for the consequent damages that the water leak defect causes.

64. Additionally, Defendant has refused to reimburse consumers who have paid to repair the water leak defect and/or paid for damage resulting from the water leak defect.

65. Upon information and belief, Defendant did not comply with the dealer-notification provisions of the California Secret Warranty Law.

66. Upon information and belief, Defendant has also failed to comply with the New Motor Vehicle Board notification procedures.

TOLLING OF THE STATUTE OF LIMITATIONS

67. Since the defects in the design or manufacture of the Class Vehicles resulting in water leaks cannot be detected until the defect manifests, Plaintiff and Class Members were not reasonably able to discover the problem until long after purchasing or leasing the Class Vehicles, despite their exercise of due diligence.

68. Plaintiff and Class Members had no realistic ability to discern the water leak defect until water leaks occurred. In addition, despite their due diligence, Plaintiff and Class Members could not reasonably have been expected to learn or discover that they were deceived and that material information concerning the water leak defect was concealed from them, until manifestation of the defect. Therefore, the discovery rule is applicable to the claims asserted by Plaintiff and the Class Members.

69. Upon information and belief, Defendant has known of the structural defects contained in the Class Vehicles since at least July 2009, if not earlier, and has concealed from or failed to alert owners and lessees of the Class Vehicles of the water leak defect at the time of purchase or repair.

70. Any applicable statutes of limitation have therefore been tolled by Defendant's concealment and denial of the facts alleged here. Defendant is further estopped from relying on any statutes of limitation because of its concealment of the defective nature of the Class Vehicles.

CLASS ACTION ALLEGATIONS

71. Plaintiff brings this lawsuit as a class action on behalf of himself and all other California residents similarly situated as members of a proposed Plaintiff Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

72. The Class and Sub-Class is defined as:

Class: All persons in the State of California who currently own or lease, or owned or leased, a Chevrolet Equinox for the model years 2005-2009 or a Pontiac Torrent of any type for the model years 2006-2009.

Sub-Class: All Members of the Class who are "consumers" within the meaning of California Civil Code section 1761(d) ("the CLRA Sub-Class").

Excluded from the Class and sub-Class are: (1) all claims for out-of-pocket water leak defect related expenses that were incurred prior to July 2009; (2) any claims for personal injury; (3) Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest of Defendant, and Defendant's legal representatives, assigns, and successors; and (4) the judge to whom this case is assigned, as well as any member of the judge's immediate family.

73. Plaintiff reserves the right to amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-Class should be expanded or otherwise limited.

74. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single class action will provide substantial benefits to all parties and to the Court.

75. Typicality: The claims of the representative Plaintiff is typical of the claims of the Class in that the representative Plaintiff, like all Class Members, owns a Class Vehicle designed and manufactured by Defendant that has the water leak defect. The representative Plaintiff, like all Class Members, has been damaged by Defendant's misconduct in that he has incurred or will incur the cost of repairing the water leak defect or repairing damage caused by the defective water leak defect. Furthermore, the factual bases of Defendant's misconduct are common to all Class Members and represent a common thread of fraudulent,

deliberate, and negligent misconduct resulting in injury to all Members of the Class.

76. Commonality: There are numerous questions of law and fact common to Plaintiff and the Class which predominate over any questions affecting only individual Class Members. These common legal and factual issues include the following.

a. Whether the Class Vehicles are defectively designed or manufactured such that they are not suitable for their intended use;

b. Whether Defendant knew or should have known of the inherent design or manufacturing defect in its Class Vehicles;

c. Whether Defendant fraudulently concealed from or failed to disclose to Plaintiff and the Class the inherent problems with its Class Vehicles;

d. Whether Defendant had a duty to Plaintiff and the Class to disclose the inherent problems with its Class Vehicles;

e. Whether the facts concealed or not disclosed by Defendant to Plaintiff and the Class are material;

f. Whether as a result of Defendant's concealment of or failure to disclose material facts, Plaintiff and the Class acted to their detriment by purchasing or repairing the Class Vehicles;

g. Whether Defendant engaged in unfair competition or unfair deceptive acts or practices when it concealed the limitations and failed to warn Plaintiff and Class Members of the defects in its Class Vehicles;

h. Whether resealing the water leak defect under Defendant's clandestine TSB program is an "adjustment program" under the Secret Warranty Law;

i. Whether Defendant should be declared financially responsible for notifying all Class Members of the problems with its Class Vehicles and for the costs and expenses of repair and replacement of the Class Vehicles;

j. Whether Plaintiff and the Class are entitled to replacement of parts related to the water leak defect;

77. Adequate Representation: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions—specifically actions involving defective products. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the Class.

78. Predominance and Superiority: Plaintiff and the Members of the Class have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Member's claims, it is likely that only a few Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages and Defendant's misconduct will continue without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

FIRST CLAIM FOR RELIEF

(Violation of California's Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*)

79. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

80. Plaintiff brings this cause of action against Defendant on behalf of himself and on behalf of the Members of the sub-Class.

81. Defendant is a "person" as defined by Civil Code section 1761(c).

82. Plaintiff and Class Members are consumers who purchased or leased the Class Vehicles.

83. By failing to disclose and concealing the water leak defect, Defendant violated Civil Code section 1770(a), as it represented that its Class Vehicles had characteristics and benefits that they do not have, and represented that its Class Vehicles were of a particular standard, quality or grade when they were of another. (*See* Civ. Code §§ 1770(a)(5) & (7).)

84. Defendant's unfair or deceptive acts or practices occurred repeatedly in Defendant's trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

85. Defendant knew that its Class Vehicles were defectively designed or manufactured, would fail prematurely, and were not suitable for their intended use.

86. Defendant was under a duty to Plaintiff and the Class to disclose the defective nature of the Class Vehicles:

a. Defendant was in a superior position to know the true state of facts about the safety defect and associated repair costs in the Class Vehicles;

b. Plaintiff and the Class Members could not reasonably have been expected to learn or discover that the Class Vehicles had a dangerous safety defect until manifestation of the failure; and

c. Defendant knew that Plaintiff and the Class Members could not reasonably have been expected to learn or discover the safety defect and the associated repair costs that it causes.

87. In failing to disclose the water leak defect and the associated repair costs that it causes, Defendant has knowingly and intentionally concealed material facts and breached its duty not to do so.

88. The facts concealed or not disclosed by Defendant to Plaintiff and the Class are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or repair Defendant's Class Vehicles, including repairing, cleaning, and/or replacing carpets, flooring, electronic components, or other parts damaged by the water leak defect. Had Plaintiff and the Class known about the defective nature of the Class Vehicles, they would not have purchased or repaired the Class Vehicles, or they would have paid less to repair or purchase it.

89. Plaintiff and the Class reasonably expected the Class Vehicles to function properly and not to experience water leaks inside the interior cabin, including the trunk, for the life of their vehicles. That is the reasonable and objective consumer expectation.

90. As a direct and proximate result of Defendant's unfair or deceptive acts or practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

91. Plaintiff and the Class are also entitled to equitable and injunctive relief.

92. Plaintiff has provided Defendant with notice of its alleged violations of the CLRA pursuant to Civil Code section 1782(a). Defendant failed to provide

the appropriate relief for its violation of the CLRA within 30 days of the date of the notification letter.

SECOND CLAIM FOR RELIEF

(Violation of California's Unfair Business Practices Act, California Business & Professions Code section 17200 *et seq.* – Violations of California's Secret Warranty Law)

93. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

94. Plaintiff brings this cause of action on behalf of himself and on behalf of the Members of the Class.

95. By committing the acts and practices alleged herein, Defendant violated the Secret Warranty Law, and by doing so, has engaged in deceptive, unfair, and unlawful business practices in violation of the Unfair Competition Law ("UCL"), California Business & Professions Code section 17200 *et seq.*

96. Defendant's violation of the Secret Warranty Law (hence the UCL) continues to this day. As a direct and proximate result of Defendant's violations of the Secret Warranty Law, hence the UCL, Plaintiff and Class Members have suffered damages related to the water leak defect.

97. Pursuant to section 17203 of the UCL, Plaintiff and Class Members seek an order of this Court requiring Defendant to comply with the terms of the California Secret Warranty Law by: (a) notifying Class Members of the secret program for repairing the water leak defect and reimbursing for damage caused by the water leak defect as required by the California Secret Warranty Law; (b) providing free repairs, modifications, corrections, and/or replacements to all Class Members as required by the Secret Warranty Law; (c) identifying and reimbursing all Class Members who have made payments related to the water leak defect as required by the Secret Warranty Law; (d) notifying California dealers of the facts

underlying the water leak defect and the terms of the secret program for repairing the water leak defect and reimbursing for damage caused by the water leak defect as required by the Secret Warranty Law; and (e) notifying the California New Motor Vehicle Board of the secret program for repairing the water leak defect and reimbursing for damage caused by the water leak defect as required by the Secret Warranty Law.

98. Plaintiff and Class Members also seek an order: (a) enjoining Defendant from failing and refusing to make full restitution of all moneys wrongfully obtained as a result of its violations of the California Secret Warranty Law, and (b) disgorging to Plaintiff and Class Members all ill-gotten revenues and/or profits earned as a result of Defendant's violation of the California Secret Warranty Law, plus an award of attorneys' fees and costs. This is because Defendant profited from its sale of replacement parts to mechanics and dealers because they ultimately replaced, repaired, corrected, or modified the defective and/or replacement parts related to the water leak defect and damage caused by the water leak defect.

THIRD CLAIM FOR RELIEF

(Violation of UCL other than Violation of the Secret Warranty Law, California's Unfair Business Practices Act, California Business & Professions Code section 17200 *et seq.*)

99. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

100. Plaintiff brings this cause of action against Defendant on behalf of himself and on behalf of the Members of the Class.

101. California Business & Professions Code section 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

102. Defendant knew its Class Vehicles were defectively designed or manufactured, would fail prematurely, and were not suitable for their intended use.

103. Defendant concealed and failed to disclose to Plaintiff and the Class the defective nature of the Class Vehicles:

a. Defendant was in a superior position to know the true state of facts about the safety defects contained in the Class Vehicles;

b. Defendant made partial disclosures about the quality of the Class Vehicles without revealing that they were defective and highly prone to water leakage and flooding; and

c. Defendant actively concealed the defective nature of the Class Vehicles from Plaintiff and the Class.

104. In failing to disclose the water leak defect, Defendant has knowingly and intentionally concealed material facts and breached its duty not to do so.

105. The facts concealed or not disclosed by Defendant to Plaintiff and the Class are material in that a reasonable person would have considered them to be important in deciding whether to purchase or repair the Class Vehicles, or pay a lesser price for them. Had Plaintiff and the Class known about the defective nature of the Class Vehicles, they would not have purchased and/or repaired the Class Vehicles or would have paid less for them.

106. Defendant continues to conceal the defective nature of the Class Vehicles even after Class Members began to report problems. Indeed, Defendant continues to cover up and conceal the true nature of the problem until this date.

107. By its conduct alleged herein, Defendant has engaged in unfair competition and unlawful, unfair, and fraudulent business acts and practices.

108. Defendant's unfair or deceptive acts or practices occurred repeatedly in Defendant's trade or business, and were capable of deceiving a substantial portion of the purchasing public.

109. As a direct and proximate result of Defendant's unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

110. Defendant has been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to sections 17203 and 17204 of the California Business & Professions Code.

RELIEF REQUESTED

111. Plaintiff, on behalf of himself and all others similarly situated, requests the Court enter judgment against Defendant, as follows

a. An order certifying the proposed Plaintiff Class and sub-Class, designating Plaintiff as the named representative of the Class and designating the undersigned as Class Counsel;

b. A declaration that Defendant is financially responsible for notifying all Class Members of the problems with its Class Vehicles and their water leak defect;

c. An order requiring Defendant to comply with the Secret Warranty Law by (i) notifying Class Members of the secret repairing of the water leak defect, and the secret repair, replacement, and reimbursement for water leak defect related damage, as required by the California Secret Warranty Law; (ii) providing free replacement, modification, and correction related to the water leak defect to all Class Members as required by the Secret Warranty Law; (iii) identifying and reimbursing all Class Members who have paid for repairing the water leak defect, replacement of parts related to the water leak defect, and repair or replacement for damage caused as a result of the water leak defect, as required by the Secret Warranty Law; (iv) notifying California dealers of the facts underlying

the water leak defect problems and the terms of GM's secret water leak defect repair and reimbursement program for the water leak defect related damage, as required by the Secret Warranty Law; and (iv) notifying the California New Motor Vehicle Board of GM's secret water leak defect repair program, and the secret repair, replacement, and reimbursement for water leak defect related damage, as required by the Secret Warranty Law;

d. An order enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to its Class Vehicles, and to repair the water leak defect and any damage caused by the water leak defect;

e. An award to Plaintiff and the Class of compensatory, statutory, and punitive damages, including interest, in an amount to be proven at trial.

f. A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or repair of its Class Vehicles, or to make full restitution to Plaintiff and the Class Members;

g. An award of attorneys' fees and costs pursuant to California Code of Civil Procedure section 1021.5, the common fund theory, or any other applicable statute, theory, or contract;

h. An award of pre-judgment and post-judgment interest, as provided by law;

i. Leave to amend the Complaint to conform to the evidence produced at trial; and

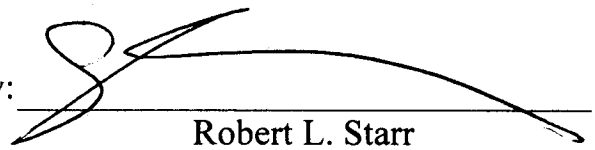
j. Such other or further relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

112. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: July 15, 2010

THE LAW OFFICE OF ROBERT L. STARR

By: 

Robert L. Starr
Attorneys for Plaintiff

PROOF OF SERVICE
CV10-2683 AHM (VBKx)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the with action; my business address is 23277 Ventura Boulevard, Woodland Hills, California 91364

On July 15, 2010, I served the foregoing document described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, addressed as follows:

Document(s) Served: **PLAINTIFF'S FIRST AMENDED COMPLAINT**

Person(s) Served:

Gregory R. Oxford, Esq.
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Co-Counsel for Plaintiff

XX (BY MAIL) I deposited such envelope in the mail at Woodland Hills, California. The envelope was mailed with postage thereon fully prepaid.

__ (BY PERSONAL SERVICE) I personally delivered by hand to the offices of the addressee(s).

XX_ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction the service was made.

EXECUTED at Woodland Hills, California on July 15, 2010.

Declarant Gordon Wong

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Attorneys for Defendant
General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [F.R.Civ.P. 12(b)(1)] OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT [28 U.S.C. § 1412]

Hearing Date: September 27, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 27, 2010, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 14, United States Courthouse, 312 North Spring Street, Los Angeles, California, defendant General Motors LLC ("New GM") will move

(1) for an order pursuant to Rule 12(b)(1) dismissing plaintiff's complaint on the grounds that the Court lacks subject matter jurisdiction as the result of an order issued by the United States Bankruptcy Court for the

Southern District of New York in the General Motors Corporation ("Old GM") bankruptcy proceedings (In re Motors Liquidation Company, No. 09-50026) in which that court retained exclusive jurisdiction (a) to enforce the terms of its order approving the sale of assets by Old GM to New GM under section 363 of the Bankruptcy Code free and clear of any liabilities of Old GM (with limited exceptions) and (b) to protect New GM against the assertion of such claims, including the claims asserted by plaintiff in this case,

or, in the alternative,

(2) for an order pursuant to 28 U.S.C. § 1412 transferring this "core" bankruptcy matter to the United States District Court for the Southern District of New York for referral to the Bankruptcy Court.

The motion is made on the ground that this Court lacks subject matter jurisdiction and that the Bankruptcy Court for the Southern District of New York is in any event the proper tribunal for interpreting and enforcing its order approving the terms of the section 363 transaction between Old GM and New GM and protecting New GM from claims such as those asserted in this action.

The motion is based on the accompanying memorandum of points and authorities, declaration and request for judicial notice and upon all pleadings papers and other evidence on file herein and such argument as the Court may entertain.

This motion follows the conference of counsel pursuant to L.R. 7-3 that occurred on June 15, 2010.

Dated: August 13, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: *[s]*
Gregory R. Oxford
Attorneys for Defendant
General Motors LLC

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Attorneys for Defendant
General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [F.R.Civ.P. 12(b)(1)] OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT [28 U.S.C. § 1412]

Hearing Date: September 27, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

Defendant General Motors LLC ("New GM") respectfully submits this memorandum in support of its motion to dismiss plaintiff's First Amended Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), F.R.Civ.P., or, in the alternative, for an order of transfer to the United States District Court for the Southern District of New York under 28 U.S.C. § 1412 for referral to the United States Bankruptcy Court for the Southern District of New York pursuant to 28 U.S.C. § 157(b).

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PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT

This is a purported class action involving 2005 through 2009 model year Chevrolet Equinox and 2006 through 2009 model year Pontiac Torrent vehicles manufactured by Motors Liquidation Company, f/k/a General Motors Corporation ("Old GM") and sold or leased in California. Plaintiff claims violation of three state statutes based on nondisclosure of an alleged design defect that supposedly permits water leakage into these vehicles. With Old GM in bankruptcy, this action improperly seeks to fasten liability under the three statutes on defendant General Motors LLC ("New GM") which did not manufacture or sell these vehicles.

New GM – a new entity majority owned by the United States government – purchased Old GM's business assets under an Amended and Restated Master Sale and Purchase Agreement ("ARMSPA") which the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") approved in its "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" ("Sale Approval Order"). The sale closed on July 10, 2009 ("Closing Date"). Copies of the Sale Approval Order and pertinent provisions of the voluminous ARMSPA (which is Exhibit A to the Sale Approval Order) are attached to the accompanying Request for Judicial Notice ("RJN) as Exhibit A.

Under the ARMSPA and Sale Approval Order, New GM did not assume Old GM's liabilities, except for specific, very limited "Assumed Liabilities" set forth in ARMSPA § 2.3(a). Among the liabilities expressly excluded from the sale were the statutory liabilities asserted by plaintiff in this case which are *not* included in any of the enumerated liabilities which New GM agreed to assume. Moreover, under the Sale Approval Order, any dispute about whether or not specific liabilities were assumed is vested in the exclusive jurisdiction of the Bankruptcy Court.

The gist of plaintiff's case is nondisclosure of alleged "design flaws and/or structural defects [which] cause[] [the subject vehicles] to be highly prone to water leaks and flooding (the 'water leak defect')…." First Amended Complaint ("FAC"), ¶ 3. Because plaintiff does not plead any claim for relief based on alleged breach of Old GM's standard warranty of repair,[1] which is the only warranty liability New GM agreed to assume, *see* ARMSPA § 2.3(a)(vii)(A), and because plaintiff's nondisclosure claims are not claims for wrongful death, personal injury or property damage "arising directly from accidents or incidents or other distinct and discreet occurrences that happen on or after the Closing Date," the only product liabilities New GM agreed to assume, *see* ARMSPA § 2.3(a)(ix), paragraphs 8, 46 and 47 of the Sale Approval Order expressly enjoin plaintiff from asserting these claims against New GM.

In a letter dated April 23, 2010 (Exhibit B to the accompanying Request for Judicial Notice), counsel for New GM advised plaintiff's counsel of (1) the pertinent provisions of the Sale Approval Order which bar the assertion of plaintiff's claims against New GM in this case and (2) the New York Bankruptcy Court's retention of exclusive jurisdiction to protect New GM against such claims.

In a letter dated May 27, 2010 (Exhibit C to the Request for Judicial Notice), plaintiff's counsel disputed New GM's position and asserted that New GM assumed statutory liability for the alleged water leak defect by virtue of ARMSPA § 2.3(a)(ix), quoted above. But plaintiff's claims are not for death, personal injury and property damage, nor were they "caused by accidents or incidents … that happen[ed] on or after the Closing Date." Thus, these claims are not "Assumed Liabilities" under section 2.3(a)(ix) and plaintiff is barred from asserting these claims against New GM by paragraphs 8 and 47 of the Sale Approval Order.

[1] Under Old GM's standard limited new vehicle warranty, the exclusive remedy for breach is free-of-charge repair of defects in materials and workmanship upon presentation of the vehicle to an authorized dealer within the warranty period. Plaintiff's complaint does not assert any claim for breach of this warranty. *See* Request for Judicial Notice, Exhibit D.

Separately, plaintiff's claims are barred by paragraph 46 of the Sale Approval Order which unambiguously protects New GM against "any liability for any claim that … ***relates to the production of vehicles prior to the Closing Date***." If, as plaintiff alleges, the claimed "water leak defect" is a "design defect" that existed when the Class Vehicles were manufactured – by Old GM before the Closing Date – then the claimed statutory liability "relates to the production of vehicles [by Old GM] prior to the Closing Date"; thus, paragraph 46 of the Sale Approval Order bars plaintiff from asserting his statutory claims against New GM.

But beyond the parties' evident differences of opinions on these points, the New York Bankruptcy Court (Hon. Robert E. Gerber) in paragraph 71 of the Sale Approval Order retained "exclusive jurisdiction to enforce and implement the terms of Order and to protect [New GM] against any of the Retained Liabilities [*i.e.*, liabilities that New GM did not assume under the Order] or the assertion of any lien, claim, encumbrance or other interest, of any kind or nature whatsoever, against the Purchased Assets [*i.e.*, the assets of Old GM purchased by New GM]." Thus, whether the Sale Approval Order bars this suit cannot be decided by this Court; instead, because interpretation of the Sale Approval Order is a "core" bankruptcy matter of which the Bankruptcy Court has retained exclusive jurisdiction, that determination can only be made by Judge Gerber. This Court therefore should dismiss this action for lack of subject matter jurisdiction, without prejudice to plaintiff's opportunity to re-file the action as an adversary proceeding in the United States Bankruptcy Court for the Southern District of New York.

As an alternative to outright dismissal, the action should be transferred to the United States District Court for the Southern District of New York under 28 U.S.C. § 1412 for referral to the Bankruptcy Court under 28 U.S.C. § 157(b) because plaintiff's violation of the Sale Approval Order is obviously a "core" bankruptcy matter, involving as it does the interpretation and enforcement of the single most important order in the Old GM bankruptcy case. *See*, *e.g.*, Tenet Health System

Philadelphia, Inc. v. National Union of Hospital and Health Care Employees, 265 B.R. 88, 95-96 (Bankr.W.D.Pa.2001) (interpretation of an order pursuant to section 363 of the Bankruptcy Code is a "core" bankruptcy matter); In re Eveleth Mines, LLC, 312 B.R. 634, 644-45 & n.14 (Bankr.D.Minn.2004) (same).

STATEMENT OF FACTS

A. Summary of Plaintiff's Allegations and Other Relevant Facts

Plaintiff purchased a used 2006 model year Chevrolet Equinox LS in January 2009. FAC, ¶ 22. This vehicle was manufactured and sold by Old GM years ago, before New GM came into existence. Sale Approval Order [RJN, Exh. A], p. 8, Recital R; Tomasek Declaration (Oxford Decl., Exhibit 1), ¶ 2.[2]

In December 2009, plaintiff's daughter noticed a "pungent odor" and later discovered that several of the seats of the Equinox were wet. FAC, ¶ 23. She took the vehicle to several GM dealerships, but apparently did not receive any repairs. *Id*., ¶¶ 24-28.

Plaintiff alleges that the water leaks are a safety issue "because of the danger of catastrophic engine and/or electrical system failure," potential failure of tail lights, and because excess moisture may promote mold growth and resulting health maladies. FAC, ¶¶ 4-9. While plaintiff elsewhere alleges that consumers have complained about the alleged "water leak defect" to the National Highway & Traffic Safety Administration, *see id*., ¶ 41, that agency apparently has not taken any action in response to these complaints.[3]

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[2] As for other model year 2005-09 Equinox and 2006-09 model year Torrent vehicles purchased or leased by members of the purported class, the Tomasek Declaration establishes that none of these vehicles were manufactured by New GM, but instead were manufactured by or for Old GM prior to July 10, 2009.

[3] To the extent that this action seeks an injunction requiring the recall of the subject vehicles to remedy an alleged safety defect, *see* Complaint, ¶¶ 97, 111b-111d, it is pre-empted *pro tanto* by the National Traffic and Motor Vehicle Safety Act which invests the National Highway Traffic Safety Administration with exclusive jurisdiction to order owner safety notifications and recall campaigns. *See* In re Bridgestone/ Firestone, Inc. Tires Prods. Liab. Litig., 153 F.Supp.2d 935, 945 (S.D.Ind. 2001); In re Ford Motor Co. Crown Victoria Police Interceptor Prods. Liab. Litig., 2004 U.S.Dist. LEXIS 29971 at *18 (N.D.Ohio).

According to plaintiff, Old GM in 2008 published a "secret" Technical Service Bulletin or "TSB" (not attached to the complaint) which instructed dealers to reseal "various structural components of the Class Vehicles that are defective, in part, because of insufficient, inadequate, or improperly applied body sealer." FAC, ¶ 11. Although "water leaks are not normally included in [Old GM's standard] warranty coverage," *id.*, ¶ 60 *and see id.*, ¶ 57, this TSB "nevertheless instructed … dealers to perform the resealing and/or replacement program at no cost to the consumer." *Id.*, ¶ 14. Supposedly, this "clandestine" program of providing free-of-charge re-sealing "was strictly limited to the most persistent customers and only those who complained loudly enough." *Id.*, ¶ 15. Plaintiff, however, affirmatively alleges that the re-sealing procedure "does not fix the water leak defect." *Id.*, ¶ 17. He nonetheless asserts that the TSB authorizing the re-sealing procedure is an "adjustment program" under California's Motor Vehicle Warranty Adjustment Programs Law, Civ. Code § 1795.90 *et seq*. ("MVWAP") and that Old GM *and, supposedly, New GM* were required to, and did not, comply with MVWAP's notification and reimbursement requirements set forth in Civ. Code § 1795.92.[4]

Plaintiff's allegations "on information and belief" concerning the supposedly "secret" Technical Service Bulletin are demonstrably incorrect. Specifically, the allegation in paragraph 56 of the First Amended Complaint that the "free water leak defect repairs [are] outlined in Defendant's secret TSB" is a complete mischaracterization. In actual fact, Old GM prior to the Closing Date had issued

[4] Under Civ. Code § 1795.90(d), a manufacturer like Old GM that extends or enlarges its new vehicle warranty to cover a condition that "may substantially affect vehicle durability, reliability or performance" is deemed to create an "adjustment program." Civ. Code § 1795.92 imposes various notification obligations on a manufacturer that creates an "adjustment program" and requires it to reimburse customers who, prior to learning of the "adjustment program," incurs expense to repair the condition in question. Here, if any adjustment program was created, which New GM disputes, it was created by Old GM when it issued the TSB in 2008. *See* Complaint, ¶ 54 ("In 2008, Defendant issued a TSB [which] describe[d] the numerous water leak defects suffered by the Class Vehicles…, the numerous possible causes of those water leak defects…, [and] the various temporary fixes for the water leak defects….").

three Technical Service Bulletins explaining how to diagnose and correct water leakage in the Equinox and Torrent. Copies of these TSBs are attached to the accompanying Oxford Declaration as Exhibits 2, 3 and 4. As the Court will see, ***none of these TSBs provides for "free" repairs or, indeed, says anything at all about payment for the repairs or whether or not they are covered under Old GM's standard repair warranty***. They merely explain potential causes for water leakage and explain how to remedy the problem. In reality, manufacturers necessarily issue service bulletins (although different manufacturers may refer to them by different names) routinely to explain how to fix any condition dealers may be required to fix, regardless of whether a manufacturer or customer is paying for it. Moreover, none of these TSBs is "secret." To the contrary, googling "Equinox water leak" leads directly to them. *See*, *e.g.*, http://ww2.justanswer.com/uploads/Bluegorilla/2008-10-26_023513_Equinox_water_leak.pdf (Bulletin 08-08-57-001A, October 8, 2008, later updated). It appears, therefore, that plaintiff's MVWAP claim, pleaded on information and belief, is a complete fantasy.

B. Old GM Bankruptcy Proceedings

On July 10, 2009, pursuant to Judge Gerber's approval of the ARMSPA, New GM purchased Old GM's business assets "free and clear" of Old GM's liabilities (with very limited exceptions) under section 363 of the Bankruptcy Code. *See In re General Motors Corp.*, 407 B.R. 463 (Bankr.S.D.N.Y.2009).

New GM did not assume Old GM's liabilities except for the specific types of liabilities which are enumerated in ARMSPA § 2.3. These included liabilities under Old GM's limited new vehicle warranties, *see* ARMSPA § 2.3(a)(vii)(A) and Sale Approval Order ¶ 56, and product liabilities for personal injury and property damage "which arise directly out of accidents, incidents or other distinct and discrete occurrences that happen on or after the Closing Date and arise from such motor vehicles' operation or performance…," *see* ARMSPA § 2.3(a)(ix). The First Amended Complaint does not allege any claim for breach of warranty, so

ARMSPA § 2.3(a)(vii)(A) is simply inapplicable. Although the parties differ as to the applicability of ARMSPA § 2.3(a)(ix), it is clear that if it does not apply plaintiff's claims are not "Assumed Liabilities" under the ARMSPA.

Moreover, the ARMSPA is explicit in excluding from the responsibilities of New GM "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 wiring by or attributable to Sellers. ARMSPA § 2.3(b)(xvi) (emphasis added). Thus, it could not be clearer that New GM assumed the obligation to honor only Old GM's express warranties of repair and post-petition claims for personal injury and property damage associated with pre-petition vehicles, and declined to assume responsibility for all other kinds of product claims, including Old GM's statutory liabilities of the types asserted in this case.

Indeed, a central purpose of the Sale Approval Order and the ARMSPA which it approved was to cut off successor and derivative liability claims against New GM based on Old GM's acts or omissions so that New GM would agree to benefit the bankruptcy estate by paying substantial consideration for Old GM's assets. To accomplish this goal, the Sale Approval Order expressly and permanently enjoins plaintiff and all other claimants from attempting to enforce liabilities against New GM *other than Assumed Liabilities*, as follows:

> "[A]ll persons and entities … holding liens, claims and encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] 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 [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing … are forever barred, estopped,

> and permanently enjoined … from asserting against [New GM] … such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability." Sale Approval Order, ¶ 8 (emphasis added).

Claims based upon Old GM's alleged statutory violations, whether "matured or unmatured" on the Closing Date, are obviously included within the broad sweep of this provision. Paragraph 9 reinforces the bar of paragraph 8 by stating that "[t]his Order (a) shall be effective as a determination that, as of the Closing (i) no claims other than Assumed Liabilities, will be assertable against [New GM]…."

Even more specifically, paragraph 46 of the Sale Approval Order provides as follows (emphasis added):

> "Except for the Assumed Liabilities expressly set forth in the [ARMSPA] … [New GM] … shall [not] 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 [Old GM] … prior to the Closing Date…. ***Without limiting the foregoing, [New GM] 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 … and ***products*** … ***liability***, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."

Plaintiff's claims here clearly "relate to the production of vehicles prior to the Closing Date" and equally clearly represent an improper attempt to fasten "successor, transferee, derivative or vicarious liabilities" on New GM "under a[] theory of … products … liability." *See also* Sale Approval Order, ¶ 47 ("Effective upon the Closing …all persons and entities ***are forever prohibited and enjoined from commencing or continuing in any manner any action*** … ***against [New GM]***

…***with respect to any (i) claim against [Old GM] other than Assumed Liabilities***) (emphasis added).

Thus, it could not be clearer that any claim against Old GM based on the Class Vehicles, actual or threatened, known or unknown, matured or unmatured, contingent or otherwise, cannot be asserted against New GM unless it fits within one of the categories of "Assumed Liabilities" set forth in ARMSPA § 2.3(a). As explained below, plaintiff's claims simply do not fall within the limited definition of "Assumed Liabilities."

C. Plaintiff's Initial and First Amended Complaints

Plaintiff's initial complaint contained four purported claims for relief, only three of which survive in his First Amended Complaint, which he agreed to file after the required LR 7-15 conference of counsel in response to GM's announced intent to move to dismiss the initial complaint or for transfer of the action.

Plaintiff's first claim for relief asserted a violation of the California Consumers' Legal Remedies Act ("CLRA"), specifically Civ. Code §§ 1770(a)(5) & (7), based on Old GM's failure to disclose the alleged "water leak defect"; plaintiff asserted that Old GM by not making this disclosure "represented that its Class Vehicles had characteristics and benefits that they do not have, and represented that its Class Vehicles were of a particular standard, quality or grade when they were of another." Plaintiffs *did not* allege that Old GM (or New GM for that matter) made any affirmative representation in this regard.

Plaintiff's second claim for relief under the California Unfair Competition Law ("UCL") fancifully sought an injunction (Bus. & Prof. Code § 17203) on the ground that Old GM's 2008 TSB was an "adjustment program" under MVWAP as to which required statutory notices and reimbursements had not been provided.

Plaintiff's third claim for relief sought restitution under the UCL based on Old GM's non-disclosure of the alleged defect.

In an effort to avoid the Sale Approval Order's explicit bans on asserting Old GM liabilities against New GM other than those which New GM agreed to assume in ARMSPA § 2.3, plaintiff in his amended complaint dropped claims for "out-of-pocket water leak defect related expenses that were incurred prior to July 2009," *see* FAC, ¶ 72(1), and also dropped a fourth claim for relief for alleged breach of implied warranty.[5] As explained in Part I-B below, however, the Sale Approval Order bars plaintiff's claims in their entirety, including claims for reimbursement of expenses incurred after the Closing Date, because, among other things, the alleged design defect clearly i) "relates to the production of vehicles prior to the Closing Date" [Sale Approval Order, ¶ 46] and also ii) "aris[es] under statutory or common law without the necessity of an express warranty" [ARMSPA § 2.3(b)(xvi)(B)], plaintiff's entire pleading is nothing more than an attempt to fasten successor liability on New GM in violation of the Sale Approval Order.

ARGUMENT

I. THE BANKRUPTCY COURT HAS EXCLUSIVE JURISDICTION TO DECIDE WHETHER THIS SUIT MAY PROCEED AGAINST NEW GM

A. Standard and Scope of Review Under Rule 12(b)(1)

A motion to dismiss for lack of jurisdiction under Rule 12(b)(1) may be either "facial" or, as here, "factual" in nature. As a result, the Court need not (indeed, cannot) assume the truth of plaintiff's factual allegations, but instead must determine based on the evidence presented whether the factual predicates for exercising jurisdiction exist. Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir.2003), *citing* White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). As explained in Morrison v. Amway Corp., 323 F.3d 920, 924 n.5 (11th Cir.2003) (emphasis added):

[5] Section 2.3(b)(xvi) and Paragraph 56 of the Sale Approval Order expressly provide that claims for breach of implied warranty are *not* Assumed Liabilities under the ARMSPA.

"Attacks on subject matter jurisdiction under Rule 12(b)(1) come in two forms, 'facial' and 'factual' attacks. Facial attacks challenge subject matter jurisdiction based on the allegations in the complaint, and the district court takes the allegations as true in deciding whether to grant the motion. *Factual attacks challenge subject matter jurisdiction in fact, irrespective of the pleadings. In resolving a factual attack, the district court may consider extrinsic evidence such as testimony and affidavits*."

Where, as here, a factual attack on jurisdiction "is *separable from the merits* of a case … the district court is: 'free to hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving factual disputes where necessary. In such circumstances, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." ' " Roberts v. Carrothers, 812 F.2d 1173, 1177 (9th Cir.1987) (emphasis added; citations omitted).

New GM's attack on jurisdiction is "factual" because it is based not only on plaintiff's allegations but on extrinsic evidence concerning the ARMSPA and Sale Approval Order entered in Old GM's bankruptcy case and the fact that the vehicles involved in the case were manufactured by Old GM, not New GM.

B. The ARMSPA and Sale Approval Order Bar Plaintiff's Claims

Because New GM did not manufacture the subject vehicles, and it therefore has no warranty, product or other liability of its own for them, plaintiff's statutory claims against New GM are barred by the Sale Approval Order unless they fall within the definition of Assumed Liabilities in ARMSPA § 2.3(a). Acknowledging as much, plaintiff's counsel's May 27, 2010 letter relied on ARMSPA § 2.3(a)(ix), which says that Assumed Liabilities include:

"(ix) all liabilities to third parties for death, personal injury, of other injury to Persons or damage to property caused by motor vehicles … manufactured, sold or delivered by [Old GM] (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…."

Thus, to be an Assumed Liability under section 2.3(a)(ix), a claim must (1) be for death, personal injury or property damage and (2) arise directly from accidents or incidents occurring *on or after* the Closing Date.

Plaintiff's first claim for relief under the CLRA clearly is *not* a claim for "death, injury to Persons or damage to property" as provided in section 2.3(a)(ix). Instead, it is a claim for *non-disclosure* of an alleged defect causing *economic loss*. *See* FAC, ¶ 88 ("Had Plaintiff and the Class known the defective nature of the Class vehicles, *they would not have purchased or repaired the Class Vehicles, or they would have paid less to repair or purchase it*" [sic]) (emphasis added). Plaintiff's CLRA claim also is not a claim "aris[ing] directly out of accidents, incidents or other distinct or discrete occurrences *that happen[ed] on or after the Closing Date*," as further provided in section 2.3(a)(ix). Instead, the CLRA claim on plaintiff's theory arose *before the Closing date* when Old GM manufactured and marketed the vehicles with the alleged "water leak defect." Complaint, ¶¶ 2-3 (Old GM "designed, manufactured, distributed, sold, and leased [the Class Vehicles]" despite knowing "in 2005, if not before" of the alleged defect). Plaintiff's attempt to fasten liability on New GM based on Old GM's nondisclosure of the alleged defect is an attempt to create precisely the type of successor or derivative liability that is antithetical to section 363 of the Bankruptcy Code and which the ARMSPA and Sale Approval Order expressly bar.

Plaintiff's second claim for relief under MVWAP is based on a Technical Service Bulletin first issued in 2008. *See* FAC, ¶ 54. Plaintiff claims that this TSB was an "adjustment program" under Civ. Code § 1795.90(d) when issued and, therefore, Old GM was obligated beginning in 2008 to provide specified notices

and monetary reimbursement to customers. Thus, because this claim, too, arose prior to the Closing Date, it does not meet the section 2.3(a)(ix) definition of "Assumed Liabilities" which must arise out of events *after* the Closing Date. This claim also is not a claim for death, personal injury or property damage, but instead, like the first claim for relief, it is a claim for economic loss which does not satisfy either prong of the "Assumed Liabilities" definition in ARMSPA § 2.3(a)(ix). And, as noted above, inspection of the actual TSBs issued by Old GM prior to the Closing Date demonstrates that they *did not* offer "free" repair of water leakage.

All of the same points apply to plaintiff's third claim for relief which asks for restitution – *i.e.*, compensation for an *economic loss* – under the UCL based on nondisclosure of the alleged defect before the Closing Date. *See* FAC, ¶¶ 109-10.

C. The Bankruptcy Court Has Exclusive Jurisdiction

The New York Bankruptcy Court has retained "***exclusive jurisdiction*** to enforce and implement the terms and provisions of [the Sale Approval] Order [and] the [ARMSPA]…, in all respects, including, but not limited to, retaining jurisdiction to … (c) resolve any disputes arising under or related to the [ARMSPA], except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order [and] (e) ***protect [New GM] against any of the [liabilities that it did not expressly assume under the ARMSPA***]…." Sale Approval Order., ¶ 71 (emphasis added).

Whether this action may proceed against New GM based on the claims plaintiff has attempted to plead in the First Amended Complaint therefore is a question which only the New York Bankruptcy Court has jurisdiction to decide. Its retention of jurisdiction aligns perfectly with the general rule presuming that the "home" Bankruptcy Court is the proper forum for civil proceedings "arising under" or "arising in cases under" title 11, so-called "core" bankruptcy matters. Hohl v. Bastian, 279 B.R. 165, 177 (W.D.Pa.2002) ("[T]he home court presumption provides that the court in which the bankruptcy case itself is pending is the proper

venue for adjudicating all related litigation, including those suits which have been filed in other state or federal courts").

Proceedings such as this which require interpretation of a Bankruptcy Court order in connection with a sale "free and clear" under section 363 indisputably are "core" proceedings. Tenet Health System Philadelphia, Inc. v. National Union of Hospital and Health Care Employees, 265 B.R. 88, 95-96 (Bankr.W.D.Pa.2001); In re Eveleth Mines, LLC, 312 B.R. 634, 644-45 & n.14 (Bankr.D.Minn.2004).

II. IF NOT DISMISSED, THIS ACTION SHOULD BE TRANSFERRED TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE "HOME" BANKRUPTCY COURT

A. 28 U.S.C. § 1412 Governs Transfer of This "Core" Proceeding

While the authorities divide on whether section 1412 or 28 U.S.C. § 1404 governs venue transfer motions in proceedings "related to" bankruptcy cases, *see* City of Liberal, Kansas v. Trailmobile Corp., 316 B.R. 358, 361-62 (D.Kan.2004),[6] there is no doubt that section 1412 governs transfer of "core" proceedings which "arise under" title 11 or "arise in" bankruptcy cases. *See* Official Committee of Asbestos Claimants of G-I Holding, Inc. v. Heyman, 306 B.R. 746, 749 (S.D.N.Y. 2004); Renaissance Cosmetics, Inc. v. Development Specialists, Inc., 277 B.R. 5, 18 (S.D.N.Y.2002).

Because Judge Gerber had core jurisdiction to enter the Sale Approval Order pursuant to section 363 of the Bankruptcy Code and to enforce its provisions, the prosecution of this action in violation of the Sale Approval Order is also a core proceeding and core jurisdiction therefore exists under 28 U.S.C. §§ 157(b) and 1334(b). As stated in In re Eveleth Mines, LLC, 312 B.R. at 644-45:

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[6] The only difference between the two statutes lies in section 1404's requirement that venue would have been proper in the transferee district if the case originally had been filed there. *See id*. at 362. Here it would make no difference if section 1404 governed because 28 U.S.C. § 1409 provides that venue is proper in the district in which the bankruptcy case is pending, here the Southern District of New York. *Id*.

"[T]he motion at bar directly and necessarily comes out of a core proceeding in this case, the Debtor's motion for authority to conduct a sale of assets of the estate free and clear of liens [pursuant to 11 U.S.C. § 363]. Core proceedings under 28 U.S.C. § 157(b) fall under the 'arising under' or 'arising in' jurisdiction of 28 U.S.C. § 1334(b). Then, [proceedings for] 'the enforcement of orders resulting from core proceedings are themselves considered core proceedings.'" (Citations omitted.)

As the Eveleth Mines Court went on to explain:

"As applied to a sale free and clear of liens, there are also good policy reasons for making a derivative core-proceeding classification…. Active bidding on assets from bankruptcy estates will be promoted if prospective purchasers have the assurance that they may go back to the original forum that authorized the sale, for a construction or clarification of the terms of the sale that it approved. Relegating post-sale disputes to a different forum injects an uncertainty into the sale process, which would dampen interest and hinder the maximization of value. A purchaser that relies on the terms of a bankruptcy court's order, and whose title and rights are given life by that order, should have a forum in the issuing court."

312 B.R. at 645 n.14; *accord* Tenet Health System Philadelphia, Inc. v. National Union of Hospital and Health Care Employees, 265 B.R. at 95-96 ("a bankruptcy court has core subject matter jurisdiction to construe its own orders" which involve "sales of assets within the bankruptcy court pursuant to 11 U.S.C. § 363"); Luan Investment S.E. v. Franklin 145 Corp., 304 F.3d 223, 229-30 (2d Cir.2002) (disputes concerning Bankruptcy Court's sale order fall within "core" jurisdiction); In re Marcus Hook Development Park, Inc., 943 F.2d 261 (3d Cir.1991) (to the same effect); New England Power & Marine, Inc. v. Town of Tyngsborough, 292 F.3d 61, 68 (1st Cir. 2002) (the "underlying dispute here involves a subsequent purchaser's interpretation of a sale order 'free and clear of liens' under 11 U.S.C.

§ 363(b), an order that can only be issued by a bankruptcy court, and so it is one that arises in a case under title 11 or perhaps arises under title 11"); Beneficial Trust Deeds v. Franklin, 802 F.2d 324, 326 (9th Cir.1986) ("Requests for bankruptcy courts to construe their own orders must be considered to arise under title 11 "core" jurisdiction] if the policies underlying the Code are to be effectively implemented").

B. This Case Should Be Transferred Under 28 U.S.C. § 1412

In general, 28 U.S.C. § 1412 permits a district court to "transfer a case or proceeding under title 11 to a district court for another district, in the interests of justice and for the convenience of the parties." While application of this standard depends on the facts of each case, "a presumption exists that civil proceedings should be tried in the 'home' court, namely the court where the bankruptcy case itself is pending." DVI Financial Services, Inc. v. Cardiovascular Laboratories, Inc., 2004 Bankr. LEXIS 353 at *10 (E.D.Pa.2004); *accord* Bayou Steel Co. v. Boltex Mfg. Co., 2003 U.S. Dist. LEXIS 9395 at *4 (E.D.La.2003) ("There is a strong presumption in favor of placing venue in the district where the bankruptcy proceedings are pending"); Thomason Auto Group, LLC v. China America Cooperative Automotive, Inc., 2009 U.S.Dist. LEXIS 22669 at *12-13 (D.N.J. 2009); Krystal Cadillac Oldsmobile-GMC Truck, Inc. v. GM Corp., 232 B.R. 622, 627 (E.D.Pa.1999); Bank of America NT&SA v. Nickele, 1998 U.S.Dist.LEXIS 5359 at *15 (E.D.Pa.1998); In re 1606 New Hampshire Ave. Assocs., 85 B.R. 298, 305 (Bankr.E.D.Pa.1988); Colarusso v. Burger King Corp., 35 B.R. 365, 368 (Bankr.E.D.Pa.1984); Stamm v. Rapco Foam, Inc., 21 B.R. 715, 724-25 (Bankr. W.D.Pa.1982); COLLIER ON BANKRUPTCY ¶ 4.04[1] (15th ed.1997). "In sum, the home court presumption provides that the court in which the bankruptcy case itself is pending is the proper venue for adjudicating all related litigation, including those suits which have been filed in other state or federal courts." Hohl v. Bastian, 279 B.R. at 177-78.

The New York Bankruptcy Court's retention of "exclusive jurisdiction" to decide all issues regarding interpretation and enforcement of the Sale Approval Opinion and ARMSPA and "to protect [New GM]" against any attempts to saddle it with Old GM liabilities which it did not assume under the ARMSPA make the "home" court presumption all but conclusive here. Thus, this Court should grant the requested transfer to the United States District Court for the Southern District of New York under section 1412 for referral to the "home" Bankruptcy Court.

CONCLUSION

For all the reasons stated, defendant General Motors LLC respectfully urges that this Court grant its motion to dismiss this action for lack of subject matter jurisdiction or, in the alternative, transfer the action pursuant to 28 U.S.C. § 1412 to the United States District Court for the Southern District of New York for referral to the New York Bankruptcy Court pursuant to 28 U.S.C. § 157(b).

Dated: August 13, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: *[s]*
Gregory R. Oxford
Attorneys for Defendant
General Motors LLC

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Attorneys for Defendant
General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

DECLARATION OF GREGORY R. OXFORD IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [F.R.Civ.P. 12(b)(1)] OR, ALTERNATIVELY TO TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT [28 U.S.C. § 1412]

Hearing Date: September 27, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

I, Gregory R. Oxford, declare and state:

1. I am a member in good standing of the bar of this Court and am counsel for defendant General Motors LLC in this case. I have personal knowledge of the matters set forth herein and could and would competently testify thereto.

2. Attached as Exhibit A to the accompanying Request for Judicial Notice is a true and correct copy of the "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 July 5, 2009 on the docket of In re Motors Liquidation Company, No. 09-50026, United States Bankruptcy Court for the Southern District of New York, Docket No. 2968, including only the first 33 pages of Exhibit A thereto, which is the "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."

3. Attached as Exhibit B to the accompanying Request for Judicial Notice is a true and correct copy of the letter dated April 23, 2010 to Robert L. Starr, plaintiff's counsel, from Lawrence S. Buonomo, General Motors Company Legal Staff.

4. Attached as Exhibit C to the accompanying Request for Judicial Notice is a true and correct copy of the letter dated May 27, 2010 from Robert L. Starr, plaintiff's counsel, to Lawrence S. Buonomo, General Motors Company Legal Staff.

5. Attached as Exhibit D to the accompanying Request for Judicial Notice is a true and correct copy of pertinent provisions of the 2005 Chevrolet Equinox limited express new vehicle warranty issued by General Motors Corporation; very similar if not identical language is contained in the warranty booklets for the 2006-09 Chevrolet Equinox and 2006-09 Pontiac Torrent vehicles.

6. Attached hereto as Exhibit 1 hereto is a true and correct copy of the Declaration of Michael G. Tomasek in Support of Motion To Dismiss for Lack of Subject Matter Jurisdiction [F.R.Civ.P. 12(B)(1)] or, Alternatively, To Transfer to the Southern District of New York for Referral to The Bankruptcy Court [28 U.S.C. § 1412] which Mr. Tomasek executed in support of the motion to dismiss plaintiff's

original complaint which GM prepared for filing and hearing on July 19, 2010, prior to plaintiff's request that GM stipulate to the filing of his First Amended Complaint.

7. Attached hereto as Exhibit 2 is a true and correct copy of GM Service Bulletin 08-08-57-001B (January 13, 2009), prior versions of which were operative in 2008.

8. Attached hereto as Exhibit 3 is a true and correct copy of GM Service Bulletin PIT3803 (December 13, 2005).

9. Attached hereto as Exhibit 4 is a true and correct copy of GM Service Bulletin PIT4246 (January 15, 2007).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed this 13th day of August, 2010.

[s]

Gregory R. Oxford

EXHIBIT 1

GREGORY R. OXFORD (S.B. #62333)
goxford@icclawfirm.com
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
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Attorneys for Defendant
General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

DECLARATION OF MICHAEL G. TOMASEK IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [F.R.Civ.P. 12(b)(1)] OR, ALTERNATIVELY TO TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT [28 U.S.C. § 1412]

Hearing Date: July 19, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

I, Michael G. Tomasek, declare and state:

1. I am currently employed by General Motors LLC ("New GM") as Manager, Sales Reporting & Data Management. Prior to June 1, 2009, I was employed in a similar capacity by General Motors Corporation ("Old GM"). In this capacity I have access to business records concerning the sale of new vehicles by Old GM and New GM to authorized GM dealers. Based on my experience and

review of those records, I have personal knowledge of the matters set forth herein and could and would competently testify thereto.

2. I am informed that plaintiff Rodolfo Fidel Mendoza purchased a previously owned model year 2006 Chevrolet Equinox in 2008. This vehicle, along with all 2005-09 model year Chevrolet Equinoxes and all 2006-09 model year Pontiac Torrents (collectively, the "Subject Vehicles") were manufactured by or for Old GM. Old GM sold the new Subject Vehicles to authorized Chevrolet and Pontiac dealers, including dealers in California, in accordance with standard invoicing and shipping procedures prior to July 10, 2009, when Old GM sold most of its assets to New GM. New GM did not manufacture any of these vehicles.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed this 18th day of June, 2010.

Michael G. Tomasek

EXHIBIT 2

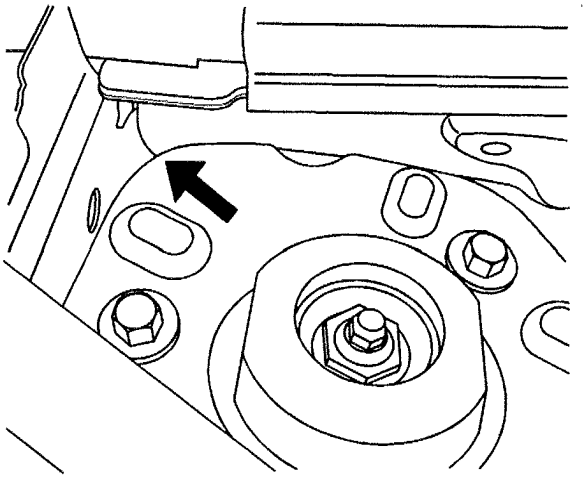
#08-08-57-001B: General Waterleak Diagnostic Guide - (Jan 13, 2009)

Subject: **General Waterleak Diagnostic Guide**

Models: **2005-2009 Chevrolet Equinox LS, LT**
2006-2009 Pontiac Torrent LS, LT

This bulletin is being revised to add a mildew odor condition repair. Please discard Corporate Bulletin Number 08-08-57-001A (Section 08 - Body and Accessories).

Condition 1



Water may be entering from the top of the strut tower into the driver side and or passenger side floor. Pull the carpeting back and check for water entering the vehicle.

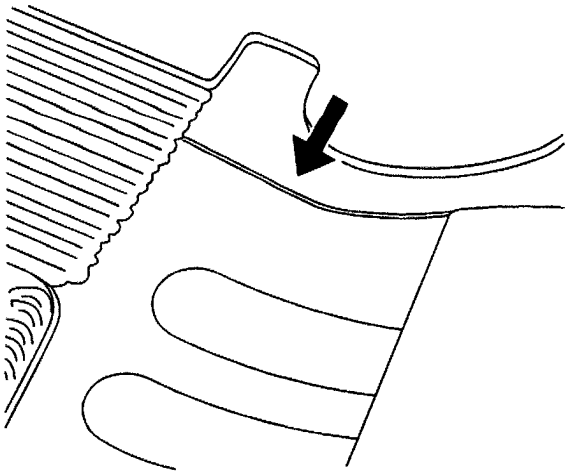
Cause

Insufficient body sealer may be the cause.

Correction

Reseal the strut tower. Use 3M™ Ultrapro Autobody Sealant Clear or equivalent.

Condition 2



Water may be entering through the seams in the floor pan on the driver side and/or passenger side.

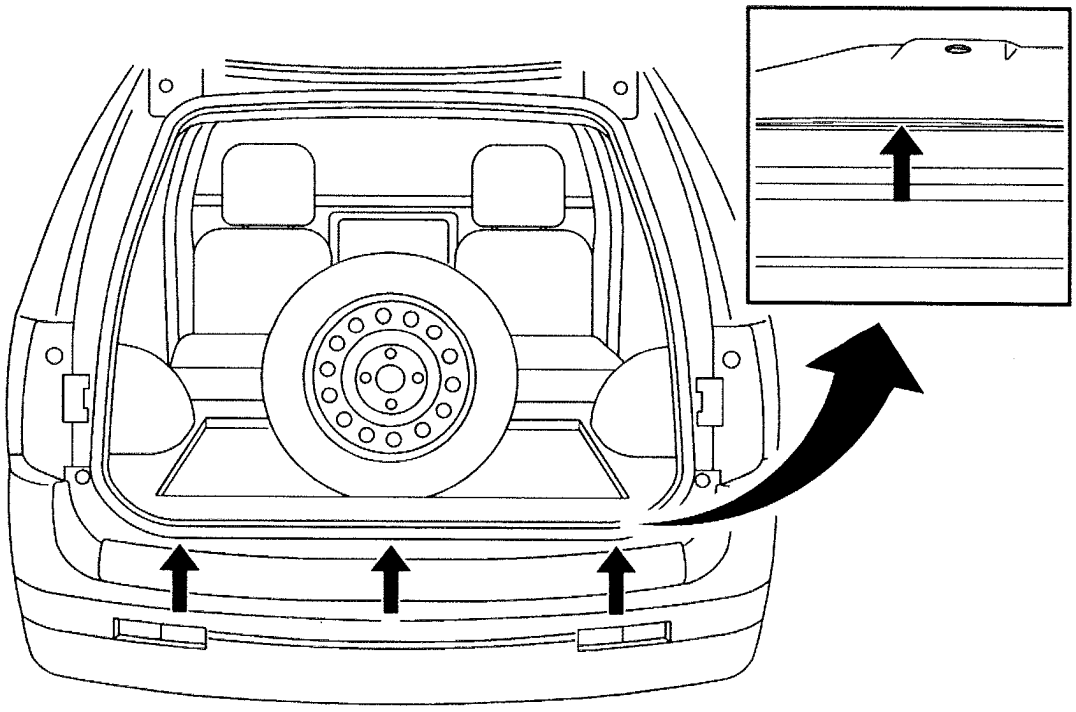
Cause

Insufficient body sealer may be the cause.

Correction

Remove the carpet and reseal the sheet metal seam.

Condition 3



Water may be entering through the liftgate weatherstrip (between a gap in the sheet metal at the bottom).

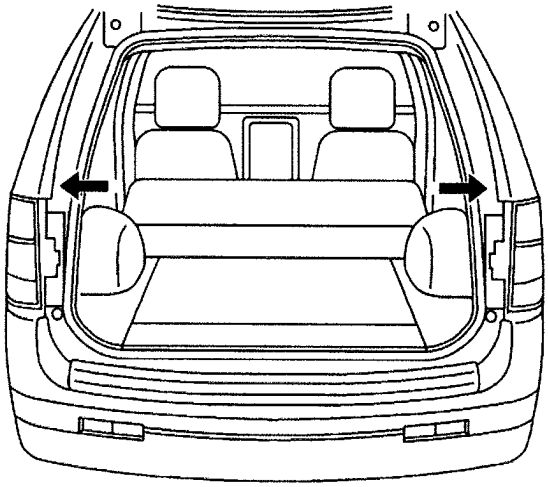
Cause

Insufficient body sealer may be the cause.

Correction

Remove the weatherstrip and reseal the sheet metal.

Condition 4



Water may be entering between the liftgate and the weatherstrip.

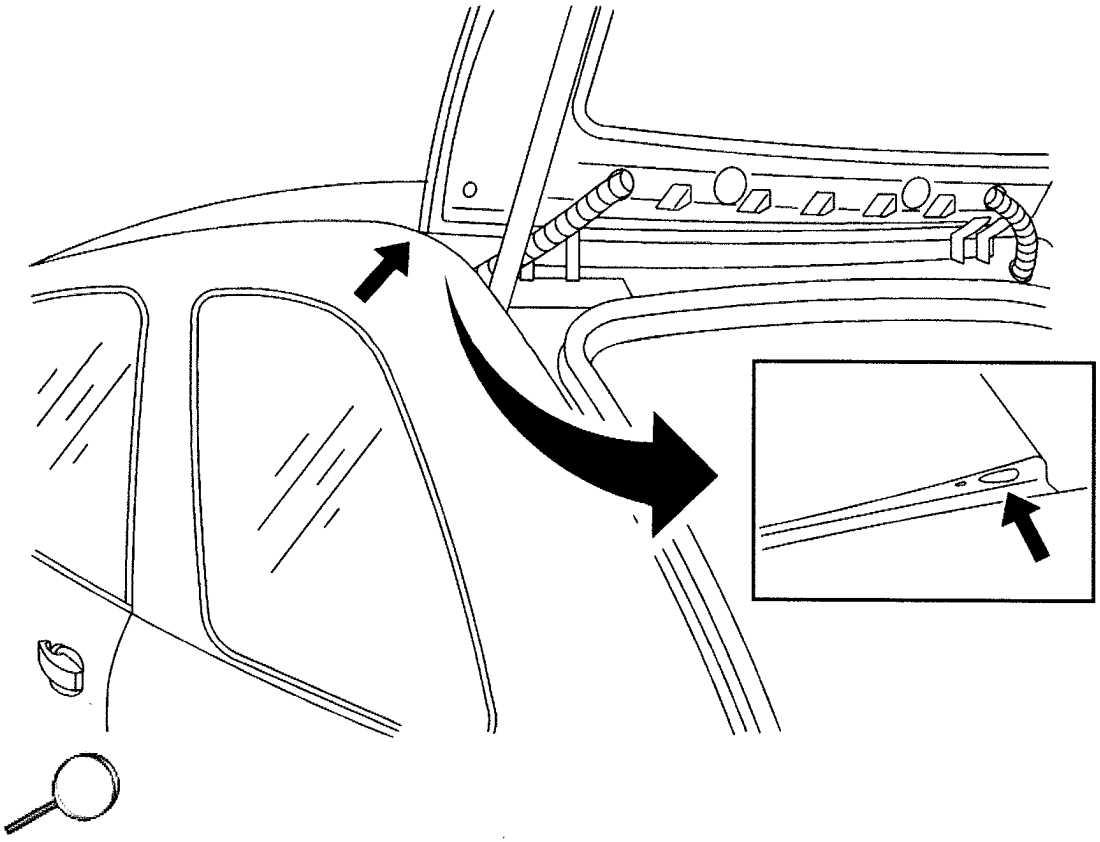
Cause

The liftgate may not be tight enough to the weatherstrip.

Correction

Adjust the liftgate. Refer to Liftgate Adjustment in SI.

Condition 5



Water may be entering through a gap in the sealer at the rear D-pillar (roof to body).

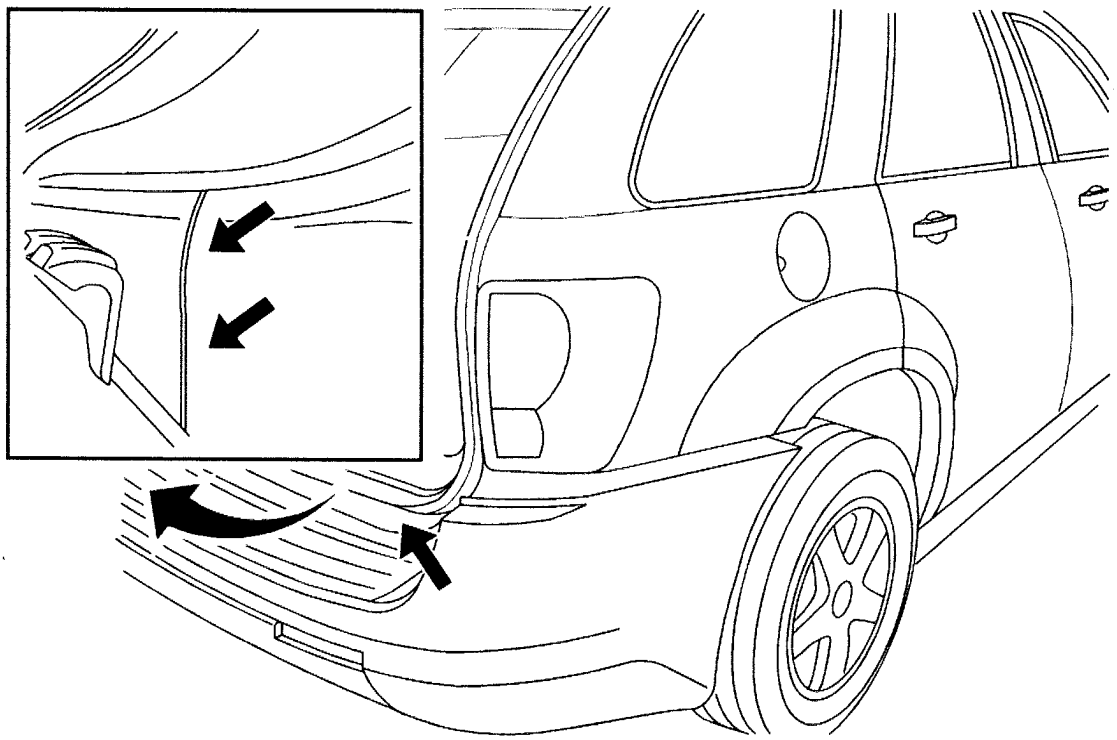
Cause

Insufficient body sealer may be the cause.

Correction

Remove the roof rack and inspect for any voids in the sealant. Refer to Luggage Carrier Replacement Equinox or Torrent in SI. Use 3M™ Ultrapro Autobody Sealant Clear or equivalent.

Condition 6



Water in spare tire compartment. Water may be entering through a gap in the sealer behind the rear fascia (left or right side).

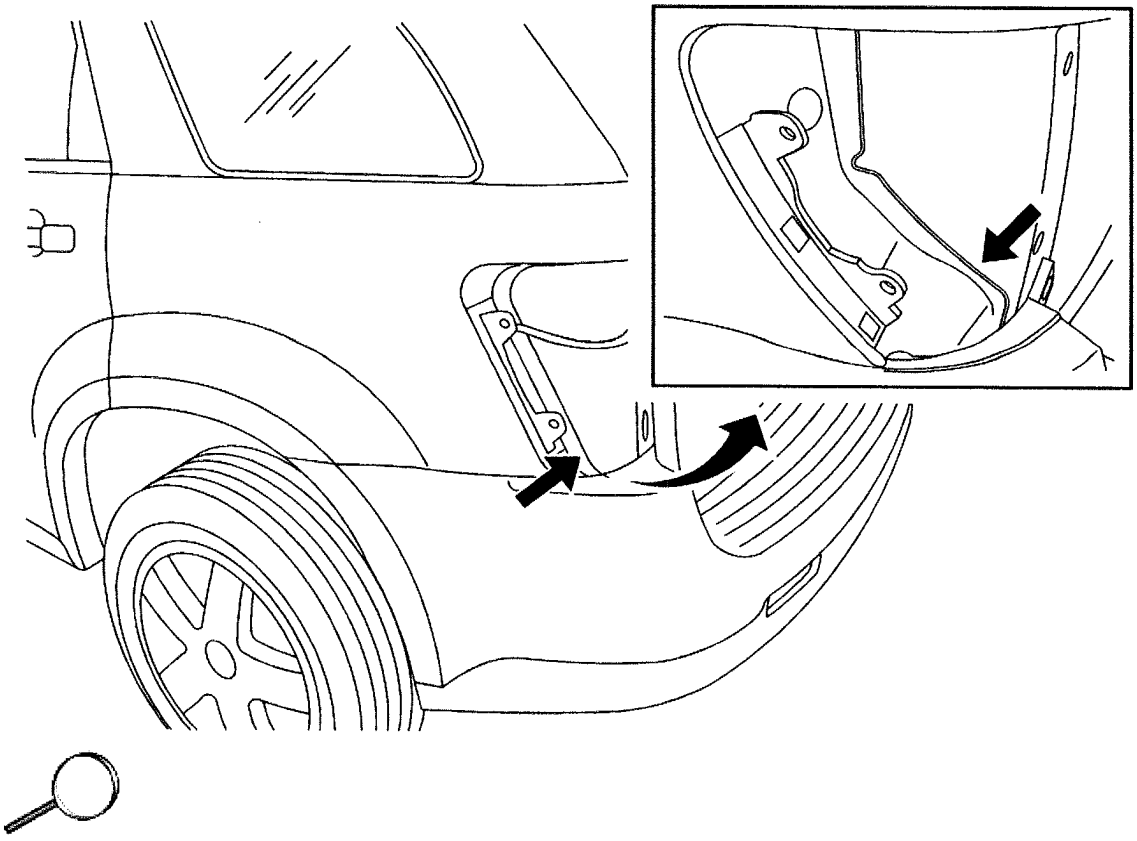
Cause

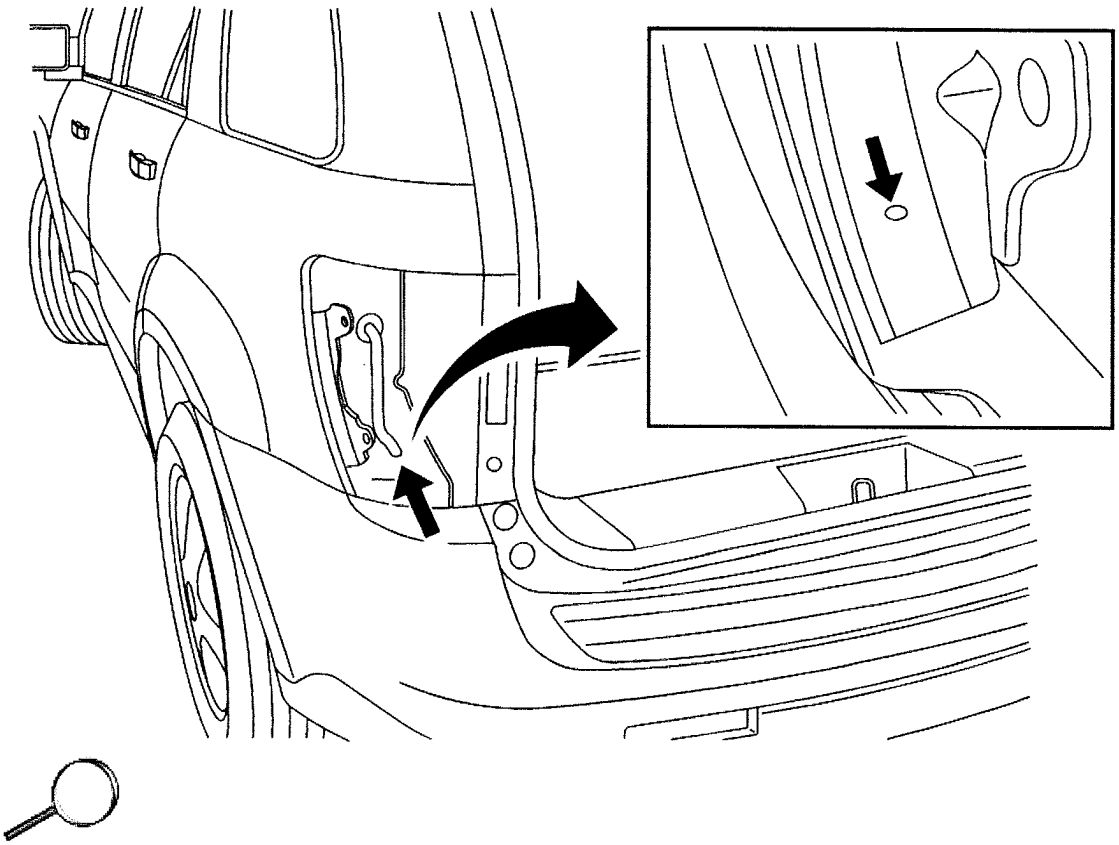
Insufficient body sealer may be the cause.

Correction

Remove the rear fascia and reseal the sheet metal seam. Refer to Rear Bumper Fascia Replacement in SI.

Condition 7





Water in the rear compartment. Water may be entering through a gap in the sheet metal behind

the tail lamps.

Cause

Insufficient body sealer may be the cause.

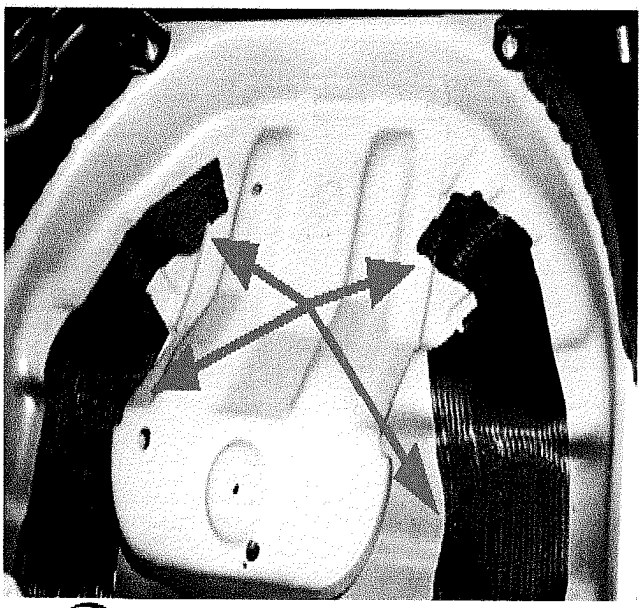
Correction

Remove the tail lamps. Refer to Tail Lamp Replacement in SI and reseal the sheet metal seam.

Condition 8

Mildew odor present in the vehicle after repairing a water leak where the floor and/or carpet was wet.

Cause



The odor may be caused by the LASD (Liquid Applied Sound Deadening), which is applied to various areas of the floor panels, getting wet. This LASD is black in color and is baked on during assembly. The graphic above shows the LASD in the spare tire well area.

Correction

Important: After repairing any of the previous seven conditions and after following the instructions in the SI document titled "Eliminating Unwanted Odors in Vehicles" and the odor concern is not fixed, follow the instructions below.

It will be necessary to remove the LASD from the floor. It is only necessary to remove the LASD that got wet. After the LASD has been removed and the floor pan cleaned, it will be necessary to

install sound deadening pads, GM P/N 12378195, or an equivalent sound deadener to replace what was removed.

Parts Information

Purchase the Body Seam Sealer locally.

Part Number	Description
08302	3M™ Ultrapro Autobody Sealant Clear
12378195	Pad, Sound Deadening

EXHIBIT 3

#PIT3803: Water Leak from the Right Side of the Instrument Panel During Heavy Rain or When Going Through a Car Wash - keywords carpet case drain floor HVAC leak plenum wet - (Dec 15, 2005)

Subject: **Water Leak From The Right Side Of The Instrument Panel During Heavy Rain Or When Going Through A Car Wash**

Models: **2006 Chevrolet Equinox**
Between VIN break points 66027135 to 66035604
2006 Pontiac Torrent
Between VIN break points 66030403 to 66040620

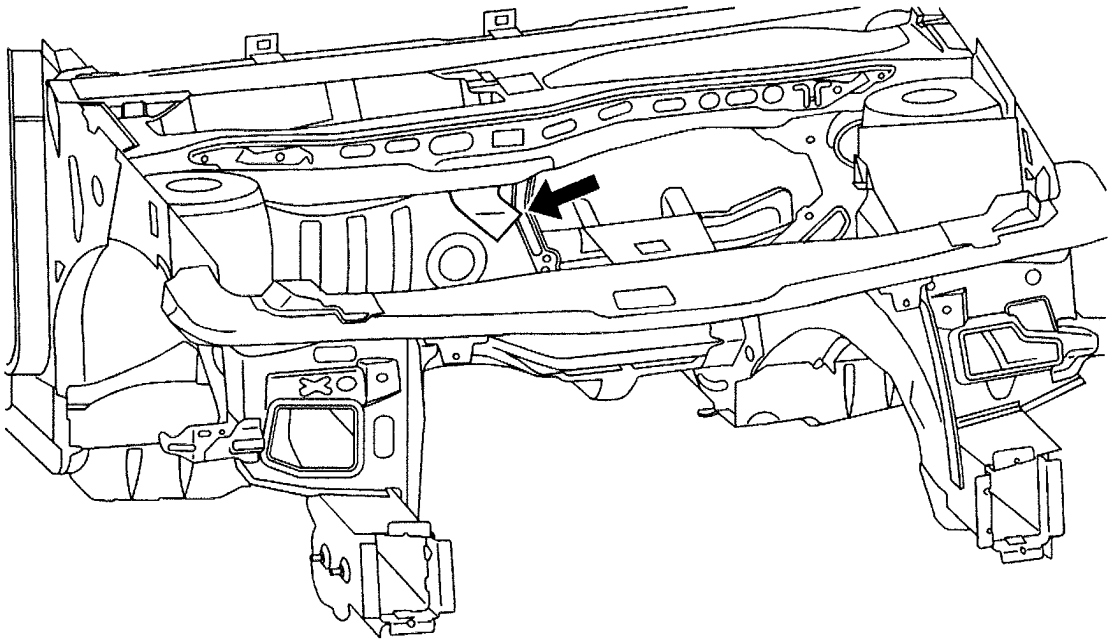
The following diagnosis might be helpful if the vehicle exhibits the symptom(s) described in this PI.

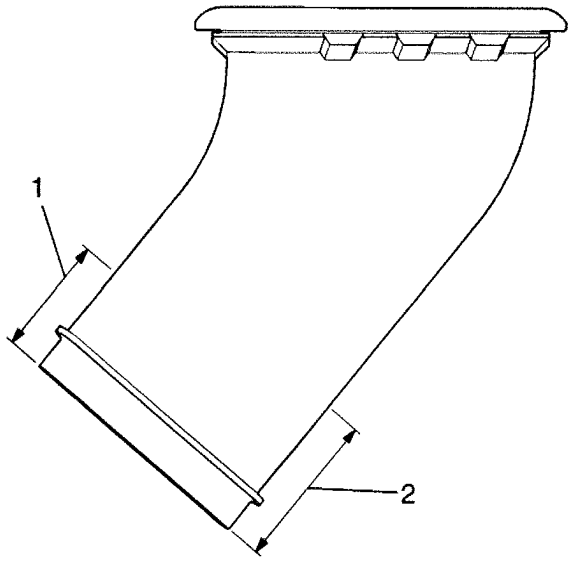
Condition/Concern:

Some customers may comment of a water leak from the right side of the instrument panel when going through a car wash or during a heavy rain. The plenum drain plug was manufactured from an incorrect material that does not expand enough to allow water in the cowl to drain quickly enough.

Recommendation/Instructions:

Technicians are to cut two slits in the sides of the plenum drain plug. Refer to the attached illustration for the location of the plenum drain plug and for the dimensions of the cuts.





Please follow this diagnostic or repair process thoroughly and complete each step. If the condition exhibited is resolved without completing every step, the remaining steps do not need to be performed.

GM bulletins are intended for use by professional technicians, NOT a "do-it-yourselfer". They are written to inform these technicians of conditions that may occur on some vehicles, or to provide information that could assist in the proper service of a vehicle. Properly trained technicians have the equipment, tools, safety instructions, and know-how

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to do a job properly and safely. If a condition is described, DO NOT assume that the bulletin applies to your vehicle, or that your vehicle will have that condition. See your GM dealer for information on whether your vehicle may benefit from the information.

TECHNICIAN CERTIFICATION

EXHIBIT 4

#PIT4246: The Carpet Is Wet In The Front Passenger Area - keywords cowl dash floor instrument IP leak panel right sealant sealer strut tower water waterleak - (Jan 15, 2007)

Subject: **The Carpet Is Wet In The Front Passenger Area**

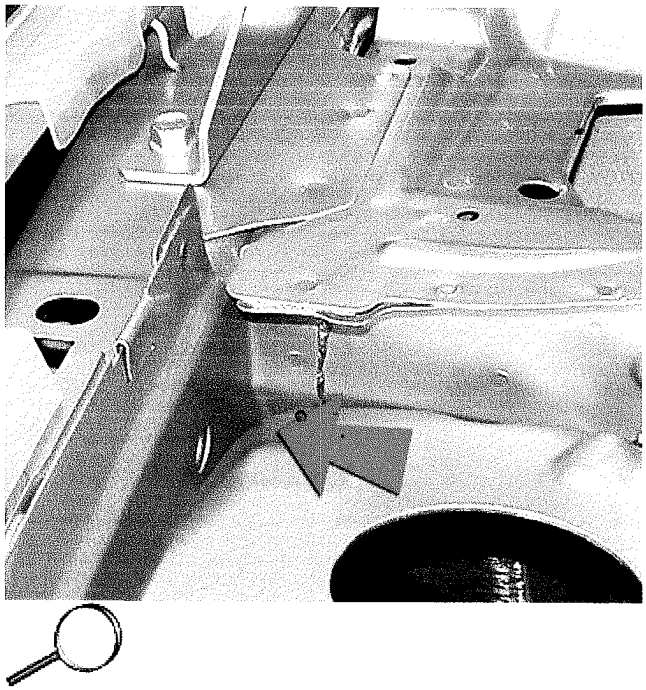
Models: **2007 Chevrolet Equinox**
2007 Pontiac Torrent

The following diagnosis might be helpful if the vehicle exhibits the symptom(s) described in this PI.

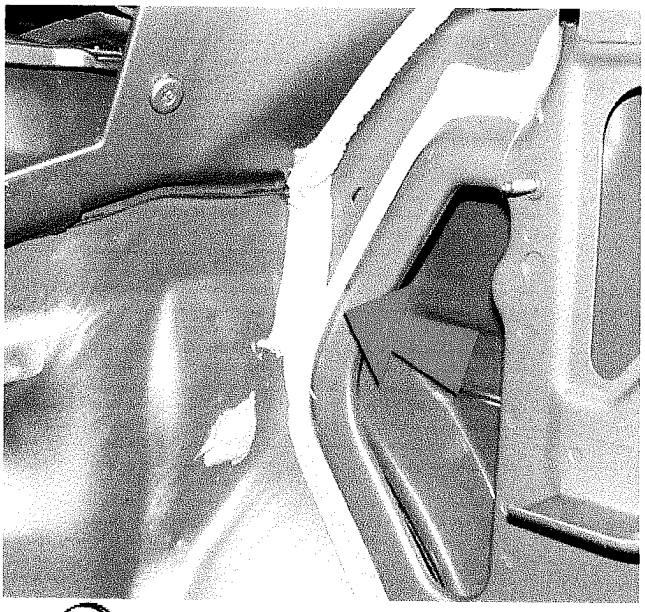
Condition/Concern:

Some owners of an Equinox or Torrent may comment about wet carpet in the front passenger area. This will usually happen during a significant rain storm. This concern can be caused by the body sealant between the side body and cowl may be misplaced, allowing water to pass from the top of the right front strut tower into the cabin.

To check for this leak, apply water at the corner of the strut tower (see picture below).



With the passenger side carpet pulled back, look for water to entering from behind the instrument panel on the right side (See picture below).



Recommendation/Instructions:

To repair this concern, apply body sealant at the strut tower to dash panel area.

Please follow this diagnostic or repair process thoroughly and complete each step. If the condition exhibited is resolved without completing every step, the remaining steps do not need to be performed.

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Attorneys for Defendant
General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [F.R.Civ.P. 12(b)(1)] OR, ALTERNATIVELY TO TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT [28 U.S.C. § 1412]

Hearing Date: September 27, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

Defendant General Motors LLC ("New GM") respectfully asks that the Court take judicial notice of the following documents pursuant to FRE 201 of the following documents:

1. "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 July 5, 2009 on the docket of In re Motors Liquidation Company, No. 09-50026, United States Bankruptcy Court for the Southern District of New York, Docket No. 2968 ("Sale Approval Order"). The Sale Approval Order includes as Exhibit A the 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 ("ARMSPA"). A true and correct copy of the Sale Approval Order and pages 1 through 33 of the ARMSPA are attached hereto as Exhibit A.

2. Letter dated April 23, 2010 to Robert L. Starr, plaintiff's counsel, from Lawrence S. Buonomo, General Motors Company Legal Staff, a true and correct copy of which is attached hereto as Exhibit B.

3. Letter dated May 27, 2010 from Robert L. Starr, plaintiff's counsel, to Lawrence S. Buonomo, General Motors Legal Staff, a true and correct copy of which is attached hereto as Exhibit C.

4. Exemplar, 2005 Chevrolet Equinox warranty, a true and correct copy of which is attached hereto as Exhibit D.

Dated: August 13, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: *[s]*
Gregory R. Oxford
Attorneys for Defendant
General Motors LLC

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.

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

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 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

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 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.

Approval of GM's Assumption of the UAW Claims Agreement

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

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

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.

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

Exhibit A

AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

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

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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.

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

"Transfer Taxes" 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.

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

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

"Transferred Entities" 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.

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

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

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

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

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

"UAW Active Labor Modifications" 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 **Exhibit C** (the 2009 Addendum without attachments), which modifications were ratified by the UAW membership on May 29, 2009.

"UAW Collective Bargaining Agreement" 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 "UAW Collective Bargaining Agreement" 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

EXHIBIT B

Lawrence S. Buonomo
Attorney

General Motors Company
Legal Staff
400 GM Renaissance Center
Mail Code: 482-026-601
Detroit, Michigan, 48265-4000
Tel 313-665-7390
Fax 248-267-4291
lawrence.s.buonomo@gm.com

April 23, 2010

Via Facsimile (818-225-9042)

Robert L. Starr, Esq.
23277 Ventura Boulevard
Woodland Hills, California 91364

Re: **Mendoza Demand Letter: 2005-2009 Chevrolet Equinox and Pontiac**

Dear Mr. Starr:

Your letter dated April 8, 2010 addressed to Mr. Edward Whitacre was referred to me for response.

Based on your letter, we understand that you represent the owner of a 2006 Chevrolet Equinox. Contrary to the statements in the letter, General Motors LLC did not manufacture, sell, offer or advertise that vehicle and is not responsible for the claims asserted, even to the extent they are meritorious, which we believe they are not.

As you presumably know, General Motors LLC f/k/a General Motors Company f/k/a NGMco, Inc. ("New GM") acquired substantially all of the assets of former General Motors Corporation, now known as Motors Liquidation Company, on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). *See generally In re General Motors Corp.*, 407 B.R. 463 (Bankr., SDNY 2009)("Sale Opinion")(approving sale transaction). In acquiring these assets, New GM did not assume the liabilities of General Motors Corporation. In particular, New GM did not assume responsibility for product liability claims arising from incidents involving GM vehicles that occurred prior to the July 10 closing date. *Id.*, 407 B.R. at 499-507 (overruling objections by tort claimants seeking to preserve claims against New GM). *See also In re Chrysler, LLC*, 2009 WL 2382766, pp 11-13 (2nd Cir. 2009)(bankruptcy court was permitted to authorize the sale of substantially all Chrysler's automotive assets free and clear of claims of tort claimants).

The scope and limitations of New GM's responsibilities are defined in the Bankruptcy Court's "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 on July 5, 2009 (the "Sale Approval Order"), which is a final binding order.[1] The Sale Approval Order provides that, with the exceptions of certain liabilities expressly assumed under

[1] The Sale Approval Order is publicly available at http://docs.motorsliquidationdocket.com/pdflib/2968_order.pdf.

the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever. . . including rights or claims based on any successor or transferee liability. . ." *Id.*, ¶7.

The claims asserted in your letter were not assumed. To the contrary, the Amended and Restated Master Sale and Purchase Agreement ("MSPA") expressly excludes "Product Liabilities arising in whole or in part from any accidents incidents or other occurrences that happen prior to the Closing Date." Sale Approval Order, Ex A., §2.3(ix). *See also* Sale Opinion, 407 B.R. at 500. Furthermore, the Sale Approval Order expressly determines that New GM did not assume "responsibility for Liabilities contended to arise by virtue of . . . 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."

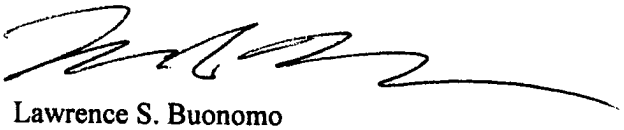
To be sure, New GM did assume the obligations of General Motors Corporation in connection with certain "express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of" specified vehicles. MSPA, §2.3(a)(vii). However, the effect of that was that New GM assumed the obligation to fund and otherwise support the standard limited warranties of repair issued by General Motors Corporation but not other liability claims asserted to relate in some way to warranties. To the extent that is not clear (and it is), it was confirmed by the Sale Approval Order which clarifies that New GM assumed warranty obligations "subject to the conditions and limitations contained in [the relevant] express written warranties." Sale Approval Order, ¶56. The coverage on the express warranty covering your client's vehicle is limited to repair of specific defects in material and workmanship if the vehicle is presented to an authorized dealer within the express time and distance limitations of the warranty.

The assertion of the claims laid out in your letter constitutes a violation of the Sale Approval Order, which unambiguously states that "all persons and entities, including, but not limited to . . . litigation claimants and [others] holding liens, claims and encumbrances, and other interest of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability . . . are forever barred, stopped, and permanently enjoined. . . from asserting against [New GM], its successors or assigns, its property, or the Purchased Assets, such persons' or entities' [rights or claims], including rights or claims based on any successor or transferee liability." *Id.*, ¶8. *See also Id.*, ¶46 (". . . 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 fact 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."), *Id.*, ¶52 (Sale Approval Order "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. . .").

In the Sale Approval Order, the Bankruptcy Court retained "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 not expressly assume under the MSPA]." *Id.*, ¶71.

Accordingly, New GM hereby demands that the assertion of claims set forth in the letter be immediately discontinued. In the event such claims are served, New GM will take appropriate steps to enforce the Sale Approval Order, including to recover all costs, expenses and fees incurred, along with such other remedies as the Bankruptcy Court may deem appropriate.

Sincerely,



Lawrence S. Buonomo
Attorney

c: Gregory Oxford, Esq.

LSB:lsb

EXHIBIT C

The Law Office Of
ROBERT L. STARR
23277 Ventura Boulevard
Woodland Hills, California, 91364
Telephone (818) 225-9040
Facsimile (818) 225-9042

May 27, 2010

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

Lawrence S. Buonomo
General Motors Legal Staff
400 GM Renaissance Center
Detroit, Michigan 48265-4000

Edward E. Whitacre, Jr.
Chairman and Chief Executive Officer
General Motors, LLC
C/O CT Corporation System
818 West 7th Street
Los Angeles, CA 90017

Edward E. Whitacre, Jr.
Chairman and Chief Executive Officer
General Motors, LLC
300 Renaissance Center
Detroit, MI 48265-3000

Gregory R. Oxford
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503

Re: Defective 2005-2009 Chevrolet Equinox and 2006-2009 Pontiac Torrent LS and LT Vehicles ("Class Vehicles" or "GM Vehicles")

This letter serve as our formal response to your letter dated April 23, 2010.[1]

We have reviewed the Amended and Restated Master Sale and Purchase Agreement ("MPA") between General Motors, LLC ("New GM") and General Motors Corporation ("Old GM") referenced in your letter, as well as other related Bankruptcy filings and orders. Based

[1] Our brief delay in responding to your correspondence was due to the extensive analysis that we undertook to review the New GM's and Old GM's bankruptcy filings, as well as other bankruptcy filing related research.

upon our review of said documents, we respectfully disagree with your position that New GM has no liability for the defects contained in the Class Vehicles and/or any of the associated repair costs that Mr. Mendoza and prospective class members have incurred to date.

As you know, section 2.3(a) of the MPA provides, in relevant part, that New GM will assume, among other things, the following liabilities from Old GM:

> (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 . . . .

Emphasis added.

According to this provision, the term "Sellers" refers to Old GM, and New GM continues to be responsible for all presently defective vehicles sold by Old GM. Similarly, New GM continues to be responsible for all defect-related damage that "arise[s] directly out of . . . incidents first occurring on or after the Closing Date." Here, our client incurred damages after the Closing Date and, like all current owners and purchasers of the Class Vehicles, is presently in possession of a vehicle that is defective.

While we may agree that New GM is not responsible for reimbursing consumers who incurred defect-related damage prior to the Closing Date, we disagree with your position that the bankruptcy discharge absolved New GM of all liabilities, including repairing vehicles that are presently defective, as well as reimbursing consumers for defect-related damage incurred after the Closing Date.[2]

Having taken into account Old GM's bankruptcy filings, and to insure that there is no confusion in connection with Plaintiff's CLRA demand, pursuant to the California Consumer Legal Remedies Act ("CLRA"), California Civil Code section 1750 *et seq.*, and specifically, sections 1782 (a)(1) and (2), we now notify you that at least since July 2009, New GM has violated section 1770 of the CLRA by actively concealing the defective nature of the Class Vehicles, which it knew (or should have known) are defective, from thousands of consumers in California and throughout the United States.

In particular, we notify you that each of the Class Vehicles currently suffers from

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[2] The CLRA violation giving rise to the requested liabilities is New GM's active concealment of said defects after the closing date.

numerous latent design and/or manufacturing defects relating to water entering into and damaging the Class Vehicles ("water leak defect"), including but not limited to water leaks that result in flooding of the trunk and spare tire well, as well as the cars' interior cabins, causing mold and electrical failure due to the water damaging the computers, electrical systems, and interior components of the Class Vehicles. The water leak defect presents a safety hazard because of catastrophic engine and/or electrical system failure as a result of the water damaging the vehicles' interior components while the vehicles are in operation. Further, the water leak defect is dangerous because it can promote mold growth, thereby exposing Class Vehicles' owners and their passengers to numerous health problems, including allergic reactions and asthma attacks.

We represent Mr. Rodolfo Fidel Mendoza, a consumer who resides in California and who in December of 2009 suffered a loss as a result of the defectively designed and/or manufactured Class Vehicles. Specifically, Mr. Mendoza's vehicle, VIN 2CNDL13F786001899, has experienced multiple instances of the water leak defect and has not yet been repaired.

There is clear evidence that New GM has known about the water leak defect as early July 2009, if not earlier. Many owners and lessees of the Class Vehicles have experienced the water leak defect and have suffered a loss as a result of it.

New GM's conduct in concealing the defective nature of the Class Vehicles from consumers, while knowing that they contained multiple design and/or manufacturing defects that cause flooding and resulting operational problems and health hazards, constitutes the following violations of section 1770:

1. New GM represented that the Class Vehicles had characteristics or benefits that they did not have (§ 1770 (a)(5));

2. New GM has falsely represented that the Class Vehicles were of a particular standard, quality, or grade when they are of another (§ 1770 (a)(7)); and

3. New GM advertised the Class Vehicles with the intent not to sell them as advertised (§ 1770 (a)(9)).

Pursuant to section 1782 of the CLRA, based on the foregoing, we again hereby demand that within thirty (30) days of receiving this letter, New GM:

1. Pay all costs of repairing or replacing the defective Class Vehicles currently owned or leased by any individual residing in California, so that the Class Vehicles will no longer be susceptible to an excessive and dangerous propensity to suffer from the water leak defect;

2. Pay all costs of repairing or replacing any other parts of the Class Vehicles owned or leased by any individual residing in California that were damaged as a result of the water leak defect after the Closing Date, which is on or about July 2009;

3. Reimburse any and all individuals residing in California who currently own or lease a Class Vehicle for all expenses incurred (after the July 2009 Closing Date) in repairing the Class Vehicles and their water leak defects as alleged herein, including reimbursing all individuals for all of their consequential and/or incidental damages;

4. Reimburse any and all individuals residing in California who owned or leased a GM Vehicle for all expenses incurred (after the July 2009 Closing Date) to repair the Class Vehicles and their water leak defects, including reimbursing all individuals for all their consequential and/or incidental damages; and

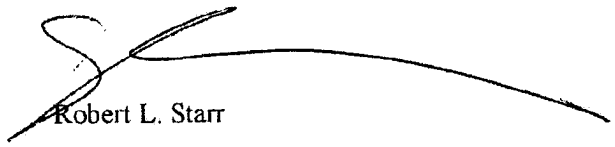
5. Provide monetary compensation, plus interest, to all owners and/or lessees of the Class Vehicles in California who have been damaged as a result of New GM's conduct alleged herein.

Unless New GM takes such action as demanded above within (30) days after your receipt of this letter, we intend to bring suit for damages pursuant to the CLRA on behalf of all owners and lessees of the Class Vehicles residing in California.

If you have any questions regarding this notice and demand, please contact me at (818) 225-9040.

Sincerely,

LAW OFFICES OF ROBERT L. STARR



Robert L. Starr

EXHIBIT D

2005

Warranty and Owner Assistance Information

CHEVROLET

Federal

- Gasoline Engines
  - Defects and performance for cars and light duty truck emission control systems are covered for the first 2 years or 24,000 miles, whichever comes first. From the first 2 years or 24,000 miles to 3 years or 36,000 miles defects in material or workmanship continue to be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage explained previously.
  - Catalytic converters and powertrain control modules are covered for the first 8 years or 80,000 miles, whichever comes first.
  - Defects and performance for heavy duty truck emission control systems are covered for the first 5 years or 50,000 miles, whichever comes first.
- 6.6L DURAMAX® Diesel Engines are covered for the first 5 years or 50,000 miles, whichever comes first.

California

- Gasoline Engines
  - Defects and performance for cars, light duty, and medium duty truck emission control systems are covered for the first 3 years or 50,000 miles, whichever comes first.
  - Specified components for cars or light duty trucks equipped with light duty or medium duty truck emission control systems are covered for the first 7 years or 70,000 miles, whichever comes first.
  - Defects and performance for heavy duty truck emission control systems are covered for the first 5 years or 50,000 miles, whichever comes first.
- 6.6L DURAMAX® Diesel Engines are covered for the first 5 years, 100,000 miles, or 3,000 hours of operation, whichever comes first.

Noise Emissions

- Coverage is for applicable vehicles weighing over 10,000 lbs based on the Gross Vehicle Weight Rating (GVWR) only, for the entire life of the vehicle.

GM will provide for repairs to the vehicle during the warranty period in accordance with the following terms, conditions, and limitations.

What Is Covered

Warranty Applies

This warranty is for GM vehicles registered in the United States and normally operated in the United States or Canada, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

Repairs Covered

The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Obtaining Repairs

To obtain warranty repairs, take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs. A reasonable time must be allowed for the dealer to perform necessary repairs.

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What Is Not Covered" later in this section.

Tire Coverage

The tires supplied with your vehicle are covered against defects in material or workmanship under the Bumper-to-Bumper coverage. Any tire replaced will continue to be warranted for the remaining portion of the Bumper-to-Bumper coverage period.

Following expiration of the Bumper-to-Bumper coverage, tires may continue to be covered under the tire manufacturer's warranty. Review the tire manufacturer's warranty booklet or consult the tire manufacturer distributor for specific details.

Accessory Coverages

All GM accessories sold by GM and parts that are permanently installed on a GM vehicle prior to delivery will be covered under the provisions of the New Vehicle Limited Warranty. In the event GM accessories are installed after vehicle delivery, or are replaced under the new vehicle warranty, they will be covered, parts and labor, for the balance of the vehicle warranty, but in no event less than 12 months/12,000 miles. This coverage is only effective for GM accessories permanently installed by a GM dealer or an associated GM-approved Accessory Distributor/Installer (ADI).

GM accessories sold over-the-counter, or those not requiring installation, will continue to receive the standard GM Dealer Parts Warranty of 12 months from the date of purchase, parts only.

GM Licensed Accessories are covered under the accessory-specific manufacturer's warranty and are not warranted by GM or its dealers.

Notice: **This warranty excludes:**

Any communications device that becomes unusable or unable to function as intended due to unavailability of compatible wireless service from the wireless communication carrier that provides service for the OnStar® system.

Sheet Metal Coverage

Sheet metal panels are covered against corrosion and rust-through as follows:

Corrosion: Body sheet metal panels are covered against rust for 3 years or 36,000 miles, whichever comes first.

Rust-Through: Any body sheet metal panel that rusts through, an actual hole in the sheet metal, is covered for up to 6 years or 100,000 miles, whichever comes first.

Important: Cosmetic or surface corrosion, resulting from stone chips or scratches in the paint, for example, is not included in sheet metal coverage.

Towing

Towing is covered to the nearest Chevrolet dealer if your vehicle cannot be driven because of a warranted defect.

6.6L DURAMAX® Diesel Engine Coverage

For trucks equipped with a 6.6L DURAMAX® Diesel Engine, the diesel engine, except those items listed under "What Is Not Covered" later in this section is covered for 5 years or 100,000 miles, whichever comes first. A $100.00 deductible per repair visit may apply after the vehicle has been in use for 3 years or 36,000 miles, whichever comes first. For additional information, refer to *Things You Should Know About the New Vehicle Limited Warranty on page 9*. Also refer to the appropriate emission control system warranty for possible additional coverages.

What Is Not Covered

Tire Damage or Wear

Normal tire wear or wear-out is not covered. Road hazard damage such as punctures, cuts, snags, and breaks resulting from pothole impact, curb impact, or from other objects is not covered. Also, damage from improper inflation, spinning, as when stuck in mud or snow, tire chains, racing, improper mounting or dismounting, misuse, negligence, alteration, vandalism, or misapplication is not covered.

Damage Due to Bedliners

Owners of trucks with a bedliner, whether after-market or factory installed, should expect that with normal operation the bedliner will move. This movement may cause finish damage and/or squeaks and rattles. Therefore, any damage caused by the bedliner is not covered under the terms of the warranty.

Damage Due to Accident, Misuse, or Alteration

Damage caused as the result of any of the following is not covered:

- Collision, fire, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle
- Misuse of the vehicle such as driving over curbs, overloading, racing, or other competition. Proper vehicle use is discussed in the owner manual.
- Alteration or modification to the vehicle including the body, chassis, or components after final assembly by GM.
- Coverages do not apply if the odometer has been disconnected, its reading has been altered, or mileage cannot be determined.

Important: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments, or Aftermarket Products

Damage caused by airborne fallout, chemicals, tree sap, stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered.

See "Chemical Paint Spotting" under *Things You Should Know About the New Vehicle Limited Warranty on page 9* for more details.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended maintenance schedule intervals and/or failure to use or maintain fluids, fuel, lubricants, or refrigerants recommended in the owner manual is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the owner manual are the owner's expense. Vehicle lubrication, cleaning, or polishing are not covered. Failure of or damage to components requiring replacement or repair due to vehicle use, wear, exposure, or lack of maintenance is not covered.

Items such as:

- Filters
- Brake Pads/Linings
- Clutch Linings
- Keyless Entry Batteries *
- Audio System Cleaning

- Coolants and Fluids
- Wiper Inserts
- Limited Slip Rear Axle Service
- Tire Rotation
- Wheel Alignment/Balance **

are covered only when replacement or repair is the result of a defect in material or workmanship.

* Consumable battery covered up to 12 months only.

** Maintenance items after 7,500 miles.

Extra Expenses

Economic loss or extra expense is not covered.

Examples include:

- Loss of vehicle use
- Inconvenience
- Storage
- Payment for loss of time or pay
- Vehicle rental expense
- Lodging, meals, or other travel costs
- State or local taxes required on warranty repairs

Other Terms: This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

GM does not authorize any person to create for it any other obligation or liability in connection with these vehicles. **Any implied warranty of merchantability or fitness for a particular purpose applicable to this vehicle is limited in duration to the duration of this written warranty. Performance of repairs and needed adjustments is the exclusive remedy under this written warranty or any implied warranty. GM shall not be liable for incidental or consequential damages, such as, but not limited to, lost wages or vehicle rental expenses, resulting from breach of this written warranty or any implied warranty. ***

* Some states do not allow limitations on how long an implied warranty will last or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Mendoza PLAINTIFF(S) v. General Motors LLC DEFENDANT(S).	CASE NUMBER: CV 10-2683-AHM(VBKx) **NOTICE TO FILER OF DEFICIENCIES IN ELECTRONICALLY FILED DOCUMENTS**

PLEASE TAKE NOTICE:

Pursuant to General Order 08-02, Local Rule 5-4 and/or the Federal Rules of Civil Procedure, the following deficiency(ies) has been found with your electronically filed document:

8/13/10	15	Motion to Dismiss
Date Filed	Doc. No.	Title of Doc.

ERRORS WITH DOCUMENT

- ☐ Document submitted in the wrong case
- ☐ Incorrect document is attached to the docket entry
- ☐ Document linked incorrectly to the wrong document/docket entry
- ☐ Incorrect event selected. Correct event to be used is _____
- ☐ Case number is incorrect or missing.
- ☐ Hearing information is missing, incorrect, or not timely
- ☐ Local Rule 7.1-1 No Certification of Interested Parties and/or no copies
- ☐ Case is closed
- ☑ Proposed Document was not submitted as separate attachment
- ☐ Title page is missing
- ☐ Local Rule 56-1 Statement of uncontroverted facts and/or proposed judgment lacking
- ☐ Local Rule 56-2 Statement of genuine issues of material fact lacking
- ☐ Local Rule 7-19.1 Notice to other parties of ex parte application lacking
- ☐ Local Rule 11-6 Memorandum/brief exceeds 25 pages
- ☐ Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents
- ☐ A Certificate of Good Standing is not attached to pro hac vice application.
- ☐ Other:

Note: In response to this notice the court may order 1) an amended or correct document to be filed 2) the document stricken or 3) take other action as the court deems appropriate.

You need not take any action in response to this notice unless and until the court directs you to do so.

Clerk, U.S. District Court

Dated: 8/16/10

By: S. Eagle
Deputy Clerk

cc: Assigned District Judge and/or Magistrate Judge

Robert L. Starr (State Bar No. 183052)
e-mail: starresq@hotmail.com
THE LAW OFFICE OF ROBERT L. STARR
23277 Ventura Boulevard
Woodland Hills, California, 91364-1002
Telephone: (818) 225-9040
Facsimile: (310) 225-9042

Attorney for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

STIPULATION TO EXTEND BRIEFING AND HEARING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT

Plaintiff Rodolfo Fidel Mendoza ("Plaintiff") and General Motors, LLC ("GM"), through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, Plaintiff served a Class Action Complaint ("complaint") in the matter captioned *Mendoza et al. v. General Motors, LLC* (Case No. CV-10-2683 AHM (VBK)) on GM on or about May 1, 2010;

WHEREAS, the Court entered a June 18, 2010 Order Re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response (Docket No. 12), setting and/or extending the dates for:

1. filing of Plaintiff's First Amended Class Action Complaint, by July 16, 2010;
2. filing of GM's motion to dismiss the complaint, or, in the alternative, transfer this action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1412, by August 16, 2010,
3. filing of Plaintiff's Opposition to GM's motion, by September 7, 2010;
4. filing of GM's Reply in support of its motion, by September 20, 2010; and
5. the hearing on GM's motion, for September 27, 2010 , at 10:00 a.m., Courtroom 14, in the Central District of California, Western Division.

WHEREAS, Plaintiff filed his First Amended Class Action Complaint on July 15, 2010;

WHEREAS, GM filed its Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court (Docket No. 15) ("Motion to Dismiss or Transfer") on August 13, 2010;

WHEREAS, after reading the papers supporting GM's Motion to Dismiss or Transfer, Plaintiff has become aware of what he believes are certain complex issues relating to the bankruptcy proceedings of Motors Liquidation Company f/k/a

General Motors Corporation ("Old GM") that he believes require extensive analysis of documents filed in Old GM's bankruptcy case, which are thousands of pages long;

WHEREAS, Plaintiff anticipates he will need two more weeks to prepare his Opposition given said extensive analysis;

WHEREAS, the parties have discussed and agreed upon a mutually agreeable modification of the current briefing and hearing schedule regarding GM's Motion to Dismiss or Transfer;

IT IS HEREBY STIPULATED AND AGREED, through their respective counsel of record, that the Court, subject to the convenience of its calendar, may enter an order as follows:

1. Plaintiff will file his Opposition to GM's Motion to Dismiss or Transfer by September 20, 2010;
2. GM will file its Reply in support of its Motion to Dismiss or Transfer by October 4, 2010;
3. GM's Motion to Dismiss or Transfer shall be scheduled for hearing on October 11, 2010, at 10: 00 a.m., Courtroom 14, in the Central District of California, Western Division.

DATED: August 22, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: /s/
Gregory R. Oxford
Attorneys for General Motors, LLC

DATED: August 22, 2010

ROBERT L. STARR
THE LAW OFFICE OF ROBERT L. STARR

By: /s/
Robert L. Starr
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

[PROPOSED] ORDER EXTENDING BRIEFING AND HEARING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT

The Court has reviewed and considered the parties' August 22, 2010 Stipulation to Extend Briefing and Hearing Schedule for Defendant's Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Plaintiff will file his opposition to Defendant's motion by September 20, 2010;
2. Defendant will file its reply in support of its motion by October 4, 2010;
3. Defendant's motion shall be scheduled for hearing on October 11, 2010, at 10: 00 a.m., Courtroom 14, in the Central District of California, Western Division.

DATED: August , 2010

Hon. A. Howard Matz
United States District Court Judge

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBKx)

Hon. A. Howard Matz

ORDER EXTENDING BRIEFING AND HEARING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT

The Court has reviewed and considered the parties' August 22, 2010 Stipulation to Extend Briefing and Hearing Schedule for Defendant's Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Plaintiff will file his opposition to Defendant's motion by September 20, 2010;
2. Defendant will file its reply in support of its motion by October 4, 2010;
3. Defendant's motion shall be scheduled for hearing on October 18, 2010, at

10: 00 a.m., Courtroom 14, in the Central District of California, Western Division.

DATED: August 23, 2010

Hon. A. Howard Matz
United States District Court Judge

ROBERT L. STARR (SBN 183052)
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23277 Ventura Boulevard
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Attorneys for Plaintiff Attorney for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

Case No.: 10-2683 AHM (VBK)

Judge: Hon. A. Howard Matz
Courtroom: 14

NOTICE OF ASSOCIATION OF COUNSEL

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Strategic Legal Practices, APC at 1875 Century Park East, Ste. 700, Los Angeles, CA, 90067, hereby associates The Law Office of Robert L. Starr, 23277 Ventura Boulevard, Woodland Hills, California, 91364-1002, on behalf of Rodolfo Fidel Mendoza, individually, and on behalf of a class of similarly situated individuals, in the above-captioned action.

Plaintiff respectfully requests that the service list and the Court's records be changed to reflect the addition of Strategic Legal Practices, APC as counsel for Plaintiffs and all Class Members, and that all future communications regarding this case for Plaintiffs be also directed to the attention of Payam Shahian at:

PAYAM SHAHIAN (SBN 228406)
STRATEGIC LEGAL PRACTICES, APC
1875 Century Park East, Suite 700
Los Angeles, California 90067
Telephone: (310) 277-1040
Facsimile: (310) 943-3838
Email: pshahian@slpattorney.com

Respectfully submitted,

Dated: September 14, 2010

THE LAW OFFICE OF ROBERT L. STARR

By: /s/ Robert L. Starr
Robert L. Starr
Attorneys for Plaintiffs

I hereby agree to the above association.

Dated: September 14, 2010

By: /s/ Payam Shahian
Payam Shahian
Attorneys for Plaintiffs

Robert L. Starr (State Bar No. 183052)
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Attorney for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

STIPULATION TO MODIFY BRIEFING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT

Plaintiff Rodolfo Fidel Mendoza ("Plaintiff") and General Motors, LLC ("GM"), through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, Plaintiff served a Class Action Complaint ("complaint") in the matter captioned *Mendoza et al. v. General Motors, LLC* (Case No. CV-10-2683 AHM (VBK)) on GM on or about May 1, 2010;

WHEREAS, the Court entered a June 18, 2010 Order Re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response (Docket No. 12), setting and/or extending the dates for:

1. filing of Plaintiff's First Amended Class Action Complaint, by July 16, 2010;
2. filing of GM's motion to dismiss the complaint, or, in the alternative, transfer this action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1412, by August 16, 2010,
3. filing of Plaintiff's Opposition to GM's motion, by September 7, 2010;
4. filing of GM's Reply in support of its motion, by September 20, 2010; and
5. the hearing on GM's motion, for September 27, 2010 , at 10:00 a.m., Courtroom 14, in the Central District of California, Western Division.

WHEREAS, Plaintiff filed his First Amended Class Action Complaint on July 15, 2010;

WHEREAS, GM filed its Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court (Docket No. 15) ("Motion to Dismiss or Transfer") on August 13, 2010;

WHEREAS, the parties stipulated and the Court ordered in its August 23, 2010 Order Extending Briefing and Hearing Schedule for Defendant's Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern

District of New York for Referral to the Bankruptcy Court (Document No. 21), the following schedule regarding briefing and the hearing on said motion:

1. Plaintiff will file his opposition to Defendant's motion by September 20, 2010;
2. Defendant will file its reply in support of its motion by October 4, 2010;
3. Defendant's motion shall be scheduled for hearing on October 18, 2010, at 10:00 a.m., Courtroom 14, in the Central District of California, Western Division;

WHEREAS, based on good cause, Plaintiff now anticipates the need for one more week to prepare his opposition to Defendant's motion because the attorney, Payam Shahian, who has recently made his appearance in this case and who is the Plaintiff attorney primarily responsible for preparing the opposition and focused on reading and researching issues about GM's bankruptcy filings, which are thousands of pages long, encountered or will encounter the following: on or about September 1, 2010, he moved offices to a new location; he has been unable to set up his new office because he has been without his new computers until September 13 due to a mistake on the part of the computer manufacture Dell, who delivered the computers to the wrong address; he had difficulty installing the appropriate software and back-up systems in the new computers once they arrived ; delivery personnel encountered delays receiving authorization from the building management to deliver office furniture to Mr. Shahian's new office; phone and internet connections were not appropriately working at the time of Mr. Shahian's relocation; and finally, he intends to observe Yom Kippur from sundown on Friday, September 17 through September 18, 2010, and will therefore not be doing any work during that time;

WHEREAS, the Court, in its August 23 Order, granted two weeks for GM to prepare its reply in support of its Motion to Dismiss or Transfer, even though the parties had only stipulated to one week in their August 22, 2010 Stipulation to Extend Briefing and Hearing Schedule for Defendant's Motion to Dismiss for Lack

of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court (Document No. 20);

WHEREAS, GM's counsel still anticipates that he will only need one week to prepare GM's reply in support of its Motion to Dismiss or Transfer;

WHEREAS, Plaintiff has agreed that should GM require additional time to prepare its reply in support of its Motion to Dismiss or Transfer, Plaintiff will in good faith cooperate with GM to stipulate to additional time for GM to prepare its reply in support of its Motion to Dismiss or Transfer;

WHEREAS, the parties have discussed and agreed upon a mutually agreeable modification of the current briefing regarding GM's Motion to Dismiss or Transfer, such that Plaintiff may have one extra week to prepare his opposition and GM will have one less week to prepare its reply, so that the October 18, 2010 hearing date may remain calendared on that same date;

IT IS HEREBY STIPULATED AND AGREED, through their respective counsel of record, that the Court, subject to the convenience of its calendar, may enter an order as follows:

1. Plaintiff will file his opposition to Defendant's motion by September 27, 2010;
2. Defendant will, as already scheduled, file its reply in support of its motion by October 4, 2010; and
3. Defendant's motion shall remain scheduled for hearing on October 18, 2010, at 10:00 a.m., Courtroom 14, in the Central District of California, Western Division;

DATED: September 15, 2010 ISAACS CLOUSE CROSE & OXFORD LLP

By: /s/
Gregory R. Oxford
Attorneys for General Motors, LLC

DATED: September 15, 2010 THE LAW OFFICE OF ROBERT L. STARR

By: /s/
Robert L. Starr
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

[PROPOSED] ORDER MODIFYING BRIEFING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT

The Court has reviewed and considered the parties' September 15, 2010 Stipulation to Modify Briefing and Hearing Schedule for Defendant's Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Plaintiff will file his opposition to Defendant's motion by September 27, 2010;
2. Defendant will file its reply in support of its motion by October 4, 2010;
3. Defendant's motion shall remain scheduled for hearing on October 18, 2010, at 10: 00 a.m., Courtroom 14, in the Central District of California, Western Division.

DATED: September , 2010

Hon. A. Howard Matz
United States District Court Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals, Plaintiff, v. GENERAL MOTORS, LLC, Defendant.	CASE NO. CV 10-2683 AHM (VBK) Hon. A. Howard Matz **ORDER MODIFYING BRIEFING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT**

The Court has reviewed and considered the parties' September 15, 2010 Stipulation to Modify Briefing and Hearing Schedule for Defendant's Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Plaintiff will file his opposition to Defendant's motion by September 27, 2010;
2. Defendant will file its reply in support of its motion by October 4, 2010;
3. Defendant's motion shall remain scheduled for hearing on October 18, 2010,

at 10: 00 a.m., Courtroom 14, in the Central District of California, Western Division.

DATED: September 16, 2010

Hon. A. Howard Matz
United States District Court Judge

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Attorneys for Plaintiff Rodolfo F. Mendoza

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

DECLARATION OF DARA TABESH IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS OR TRANSFER

Hearing Date: October 11, 2010
Time: 10:00 a.m.
Courtroom: 14

I, Dara Tabesh, Declare as follows:

1. I am attorney of record for the Plaintiff in the above-entitled action.

2. I am duly licensed and certified to practice law in the State of California.

3. I have personal knowledge of the facts set forth herein, except where statements are specifically based upon information and belief, and as to those statements, I am so informed after reasonable investigation and believe them to be true.

4. If called to testify to the statements in the Declaration, I could and would competently do so under oath.

5. This Declaration is submitted in regards to Plaintiff's Request for Judicial Notice and Plaintiff's Memorandum of Points and Authorities in Opposition to Motion to Dismiss or Transfer ("Opposition").

6. Attached as Exhibit 1 to this Declaration is a true and correct copy of the June 26, 2009 Amended and Restated Master Sale and Purchase Agreement ("MPA").

7. Attached as Exhibit 2 to this Declaration is a true and correct copy of the 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) ("Sale Approval Order").

8. Attached as Exhibit 3 to this Declaration is a true and correct copy of *In re General Motors Corp., et al., Debtors*, 407 B.R. 463 (S.D.N.Y. Bkrpt. July 5, 2009).

9. Attached as Exhibit 4 to this Declaration is a true and correct copy of *Ehrlich, et al. v. BMW of North America, LLC*, No. 10-1151-ABC-PJWx, Docket No. 28 (C.D. Cal. Aug. 11, 2010).

10. Attached as Exhibit 5 to this Declaration is a true and correct copy of *Marsikian, et al. v. Mercedes Benz USA, LLC, et al.*, No. 2:08-cv-04876-AHM-JTL, Docket No. 46 (C.D. Cal. May 4, 2009).

11. Attached as Exhibit 6 to this Declaration is a true and correct copy of the Report of the Senate Committee on Judiciary regarding Senate Bill 486 for a hearing dated May 4, 1993.

12. Attached as Exhibit 7 to this Declaration is a true and correct copy of *Winn, et al. v. Chrysler Group, LLC*, No. 2:09-cv-02805-MCE-GGH, 2009 WL 5206647 (E.D. Cal. 2009).

13. Attached as Exhibit 8 to this Declaration is a true and correct copy of the Chrysler LLC et al., Sale Approval Order: Old Carco LLC f/k/a Chrysler LLC, No. 09-5002 (Bankr. S.D.N.Y. May 20, 2009) (Docket No. 3232).

14. Attached as Exhibit 9 to this Declaration is a true and correct copy of *Winn v. Chrysler Group*, LLC, No. 2:09-02805-MCE-GGH, 2010 WL 1416749 (E.D. Cal. 2010).

Executed this 27th day of September, 2010, at San Francisco, California.

/s/
Dara Tabesh, Declarant

Exhibit 1

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

EXHIBITS

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.

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

"Transfer Taxes" 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.

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

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

"Transferred Entities" 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.

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

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

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

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

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

"UAW Active Labor Modifications" 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 **Exhibit C** (the 2009 Addendum without attachments), which modifications were ratified by the UAW membership on May 29, 2009.

"UAW Collective Bargaining Agreement" 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 "UAW Collective Bargaining Agreement" 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

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

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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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.

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By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

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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 **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(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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Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

Exhibit 2

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.

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

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

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.

Approval of GM's Assumption of the UAW Claims Agreement

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

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

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.

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

Exhibit 3

407 B.R. 463, 51 Bankr.Ct.Dec. 225
(Cite as: 407 B.R. 463)

United States Bankruptcy Court,
S.D. New York.
In re GENERAL MOTORS CORP., et at., Debtors.
No. 09-50026 (REG).

July 5, 2009.

Background: Motion was filed for approval of proposed sale of assets of bankrupt automobile manufacturer outside the ordinary course of its business to government-sponsored purchaser. Variety of objections were raised, including objection that sale amounted to improper sub rosa Chapter 11 plan.

Holdings: The Bankruptcy Court, Robert E. Gerber, J., held that:
(1) "good business reason" existed for allowing debtor to sell its assets immediately to purchaser sponsored by government, rather than having to wait for confirmation of plan;
(2) government-sponsored purchaser had to be deemed as acting in "good faith";
(3) proposed sale was not an impermissible "sub rosa plan";
(4) "debt" that debtor owed to government, for financing that government had made available in order to keep manufacturer afloat until it could enter bankruptcy and to assist it with its reorganization, could not be restructured as "equity," so as to prevent government from credit-bidding amount of debt;
(5) government's claim could not be equitably subordinated;
(6) debtor's assets could be sold free and clear of successor liability claims;
(7) Chapter 11 plan confirmation requirement, which prevented court from confirming proposed plan unless it provided for "continuation after its effective date of payment of all retiree benefits," was not implicated in connection with sale outside the ordinary course;
(8) debtor did not have to choose between either assuming its dealer agreements and assigning them to purchaser or rejecting them outright but could seek to ameliorate effects of immediate rejection and to provide dealers with softer landing by negotiating deferred termination agreements;
(9) court could not utilize its equitable power to enter "necessary or appropriate" orders, in order to force purchaser to assume certain liabilities of the old debtor-manufacturer based on court's notions of equity;
(10) any objection to use of Troubled Asset Relief Program (TARP) funds in connection with financing that government had provided to debtor was moot; and
(11) debtor's shareholders were not parties aggrieved, with ability to challenge proposed sale.

Sale approved.

West Headnotes

[1] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Sale outside the ordinary course of business may be used to dispose of all or the bulk of Chapter 11 debtor's assets, outside context of Chapter 11 reorganization plan. 11 U.S.C.A. §§ 363(b), 1123(b)(4).

[2] Courts 106 96(7)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(7) k. Particular questions or subject matter. Most Cited Cases
While opinion of one bankruptcy judge in judicial district is not, strictly speaking, binding on another, it is practice of bankruptcy court to grant great respect to earlier bankruptcy court precedents from same district.

[3] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and

sale outside course of business. Most Cited Cases
Even entirety of Chapter 11 debtor's business may be sold, without waiting for plan confirmation, in connection with sale outside the ordinary course of business, if there is good business reason for doing so. 11 U.S.C.A. § 363(b).

[4] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
In deciding whether there is "good business reason" for allowing Chapter 11 debtor to sell all or substantially all of its assets prior to confirmation of plan, in connection with sale outside the ordinary course of business, bankruptcy court should consider all of the salient factors pertaining to proceeding and act to further diverse interests of debtor, creditors and equity holders. 11 U.S.C.A. § 363.

[5] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
In deciding whether there is "good business reason" for allowing Chapter 11 debtor to use, sell or lease the bulk of its assets prior to confirmation of plan, in connection with sale outside the ordinary course of business, bankruptcy court may consider the following nonexclusive factors: (1) proportionate value of assets to estate as whole; (2) amount of elapsed time since the filing; (3) likelihood that plan of reorganization will be proposed and confirmed in near future; (4) effect of proposed disposition on future plans of reorganization; (5) proceeds to be obtained from the disposition vis-a-vis any appraisals of property; (6) which of the alternatives of use, sale or lease the proposal envisions; (7) whether property is increasing or decreasing in value; (8) whether estate has the liquidity to survive until confirmation of plan; (9) whether the sales opportunity will still exist at time of plan confirmation and, if not, the likelihood of satisfactory alternative sales opportunities or a stand-alone plan alternative that is equally desirable, or better, for creditors; and (10) whether there is material risk that, if court defers the sale, the patient will die on operating table. 11 U.S.C.A. § 363(b).

[6] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
In deciding whether there is "good business reason" for allowing Chapter 11 debtor to sell all or substantially all of its assets prior to confirmation of plan, in connection with sale outside the ordinary course of business, bankruptcy court must consider whether those opposing the sale have produced some evidence that sale is not justified. 11 U.S.C.A. § 363(b).

[7] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Chapter 11 debtor, as part of sale outside the ordinary course of business, may not enter into transaction that would amount to a *sub rosa* plan of reorganization or an attempt to circumvent Chapter 11 requirements for confirmation of plan of reorganization. 11 U.S.C.A. § 363(b).

[8] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
If proposed sale of Chapter 11 debtor's assets outside the ordinary course of its business has proper business justification which has potential to lead toward confirmation of plan and is not to evade plan confirmation process, then transaction may be authorized. 11 U.S.C.A. § 363(b).

[9] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets

51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases

Bankruptcy 51 3556

51 Bankruptcy
51XIV Reorganization
51XIV(B) The Plan
51k3548 Requisites of Confirmable Plan
51k3556 k. Sale or liquidation. Most Cited Cases
Under bankruptcy statute dealing with sales outside the ordinary course of business, Chapter 11 debtor may sell substantially all of its assets as going concern and later submit plan of liquidation providing for distribution of proceeds of the sale, where, for example, there is need to preserve "going concern" value because revenues are not sufficient to support continued operation of debtor's business and there are no viable sources for financing. 11 U.S.C.A. § 363(b).

[10] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
"Good business reason" existed for allowing automobile manufacturer that had filed for Chapter 11 relief to sell its assets immediately to purchaser sponsored by the United States government as transaction outside the ordinary course, rather than having to wait for confirmation of plan, where government financing that allowed manufacturer to operate was set to expire if sale was not completed, where there were no other available sources of financing, and where only alternative was liquidation of manufacturer's business in which unsecured creditors would receive nothing. 11 U.S.C.A. § 363(b).

[11] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
After determining that requisite sound business justification existed for a proposed sale of all or substantially all of Chapter 11 debtor's assets outside the ordinary course of its business, court's inquiry then turned to whether the routine requirements for any sale outside the ordinary course were met, and to whether "business judgment rule" had been satisfied. 11 U.S.C.A. § 363(b).

[12] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases

Bankruptcy 51 3071

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3071 k. Notice. Most Cited Cases

Bankruptcy 51 3072(2)

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3072 Manner and Terms
51k3072(2) k. Adequacy of price; appraisal. Most Cited Cases
In order to authorize sale outside the ordinary course of business, court must be satisfied (1) that notice has been given to all creditors and interested parties; (2) that sale contemplates a fair and reasonable price; and (3) that purchaser is proceeding in good faith. 11 U.S.C.A. § 363(b).

[13] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases

Bankruptcy 51 3071

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3071 k. Notice. Most Cited Cases

Bankruptcy 51 3072(2)

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3072 Manner and Terms
51k3072(2) k. Adequacy of price; appraisal. Most Cited Cases
Proposed sale outside the ordinary course of assets of bankrupt automobile manufacturer to purchaser sponsored by the United States government complied with statutory requirements that such a sale could be approved only on appropriate "notice" and on "fair and reasonable" terms, where proposed sale was extensively publicized and notice was given to interested parties, where no other, much less a better, offer had been received, and where proponents of sale had obtained fairness opinion from reputable advisors. 11 U.S.C.A. § 363(b).

[14] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases

Bankruptcy 51 3776.5(5)

51 Bankruptcy
51XIX Review
51XIX(B) Review of Bankruptcy Court
51k3776 Effect of Transfer
51k3776.5 Supersedeas or Stay
51k3776.5(5) k. Effect of want of stay; conclusiveness of sale. Most Cited Cases
Government-sponsored purchaser of assets of bankrupt automobile manufacturer had to be seen as acting in "good faith," not only for purpose of deciding whether sale could proceed as sale outside the ordinary course of debtor-manufacturer's business but for purpose of triggering statutory protection for purchaser's expectations in finality of sale, where proposed sale was the result of intense arm's-length negotiations, and there was no evidence of any efforts to take advantage over other bidders, of whom there were none. 11 U.S.C.A. § 363(b, m).

[15] Bankruptcy 51 3067.1

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3067.1 k. In general. Most Cited Cases

Bankruptcy 51 3776.5(5)

51 Bankruptcy
51XIX Review
51XIX(B) Review of Bankruptcy Court
51k3776 Effect of Transfer
51k3776.5 Supersedeas or Stay
51k3776.5(5) k. Effect of want of stay; conclusiveness of sale. Most Cited Cases
"Good faith" of purchaser of debtor's assets is shown by integrity of his conduct during course of sales proceedings; when there is lack of such integrity, "good faith" finding may not be made, for purpose of triggering statutory protection for good faith purchaser's expectations in finality of sale. 11 U.S.C.A. § 363(m).

[16] Bankruptcy 51 3776.5(5)

51 Bankruptcy
51XIX Review
51XIX(B) Review of Bankruptcy Court
51k3776 Effect of Transfer
51k3776.5 Supersedeas or Stay
51k3776.5(5) k. Effect of want of stay; conclusiveness of sale. Most Cited Cases
Purchaser of debtor's assets cannot be found to have acted in "good faith," for purpose of bankruptcy statute protecting good faith purchaser's expectations in finality of sale, if purchaser has engaged in fraud, colluded with other bidders or trustee, or attempted to take grossly unfair advantage of other bidders. 11 U.S.C.A. § 363(m).

[17] Bankruptcy 51 3069

51 Bankruptcy

51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Decision by bankrupt automobile manufacturer's board of directors to accept offer to sell debtor-manufacturer's assets to government-sponsored purchaser on terms offered, which were only terms available to it, and to avoid only other alternative of Chapter 7 liquidation, in which it was estimated that debtor's assets would be sold for less than 10% of $82 billion at which they were booked, an amount woefully inadequate to satisfy its roughly $172 billion in debt, not only passed muster under the business judgment test applicable to such transactions outside the ordinary course, but would withstand ab initio review. 11 U.S.C.A. § 363(b).

[18] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Requirements of business judgment rule, as applied in connection with proposed sale of debtor's assets outside the ordinary course of its business, entail the following: (1) a business decision; (2) disinterestedness; (3) due care; (4) good faith; and possibly (5) no abuse of discretion or waste of corporate assets. 11 U.S.C.A. § 363(b).

[19] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Proposed sale outside the ordinary course of assets of bankrupt automobile manufacturer to purchaser sponsored by the United States government was not an impermissible "sub rosa plan"; sales agreement did not dictate terms of Chapter 11 plan of reorganization by attempting to restructure rights of creditors of estate, but merely brought in value. 11 U.S.C.A. § 363(b).

[20] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Chapter 11 debtor and bankruptcy court should not be able to short circuit requirements for confirmation of Chapter 11 plan by establishing terms of plan sub rosa in connection with sale of debtor's assets outside ordinary course of its business. 11 U.S.C.A. § 363(b).

[21] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Proposed sale outside the ordinary course of debtor's business may be objectionable when aspects of transaction dictate terms of ensuing plan or constrain parties in exercising their confirmation rights, such as by placing restrictions on creditors' rights to vote on plan. 11 U.S.C.A. § 363(b).

[22] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Proposed sale outside ordinary course of Chapter 11 debtor's business may be objectionable as "sub rosa plan" if the sale itself seeks to allocate or dictate distribution of sale proceeds among different classes of creditors. 11 U.S.C.A. § 363(b).

[23] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases

Proposed sale of Chapter 11 debtor's assets outside ordinary course of its business does not "dictate terms" of subsequent plan, so as to be objectionable as "sub rosa plan," simply because sales proceeds are insufficient to permit dividend to certain class of creditors. 11 U.S.C.A. § 363(b).

[24] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Proposed sale of Chapter 11 debtor's assets outside ordinary course of its business is not objectionable as "sub rosa plan" based solely on fact that purchaser is to assume some, but not all, of debtor's liabilities, or because some contract counterparties' contracts will not be assumed. 11 U.S.C.A. § 363(b).

[25] Bankruptcy 51 2827

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2827 k. Claims by insiders and by attorneys in excess of value. Most Cited Cases
Factors that bankruptcy courts consider in deciding whether secured debt should be recharacterized as equity are as follows: (1) names given to the instruments, if any, evidencing indebtedness; (2) presence or absence of fixed maturity date and schedule of payments; (3) presence or absence of a fixed rate of interest and interest payments; (4) source of repayments; (5) adequacy or inadequacy of capitalization; (6) identity of interest between creditor and stockholder; (7) security, if any, for the advances; (8) corporation's ability to obtain financing from outside lending institutions; (9) extent to which advances were subordinated to claims of outside creditors; (10) extent to which advances were used to acquire capital assets; and (11) presence or absence of sinking fund to provide repayments.

[26] Bankruptcy 51 2827

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2827 k. Claims by insiders and by attorneys in excess of value. Most Cited Cases

Bankruptcy 51 3072(1)

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3072 Manner and Terms
51k3072(1) k. In general. Most Cited Cases
"Debt" that bankrupt automobile manufacturer owed to the federal government, for financing that government had made available in order to keep manufacturer afloat until it could enter bankruptcy and to assist it with its reorganization, could not be restructured as "equity," so as to prevent government from credit-bidding amount of that debt in connection with sale of debtor-manufacturer's assets outside the ordinary course to purchaser sponsored by government, where financing was fully documented as a secured loan, complete with intercreditor agreements to address priority issues with other secured lenders, had interest terms, albeit at better than market rates, and maturity terms, and had separate equity features, providing for warrants to accompany the debt instruments.

[27] Bankruptcy 51 2967.5

51 Bankruptcy
51VII Claims
51VII(F) Priorities
51k2967 Subordination
51k2967.5 k. Inequitable conduct. Most Cited Cases
Party seeking to equitably subordinate a claim must first prove the following: (1) that holder of claim engaged in inequitable conduct; (2) that this inequitable conduct resulted in injury to creditors or conferred an unfair advantage on claimant; and (3) that equitable subordination is not inconsistent with provisions of the Bankruptcy Code. 11 U.S.C.A. § 510.

[28] Bankruptcy 51 2967.5

51 Bankruptcy
51VII Claims
51VII(F) Priorities
51k2967 Subordination
51k2967.5 k. Inequitable conduct. Most

Cited Cases

Bankruptcy 51 3072(1)

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3072 Manner and Terms
51k3072(1) k. In general. Most Cited Cases

Federal government's claim against bankrupt automobile manufacturer, for financing that government had made available in order to keep manufacturer afloat until it could enter bankruptcy and to assist it with its reorganization, could not be equitably subordinated to other debt, so as to prevent government from credit-bidding amount of that debt in connection with sale of debtor-manufacturer's assets outside the ordinary course to purchaser sponsored by government, given complete lack of evidence of any inequitable conduct by government in advancing funds to help thousands of creditors, citizens, employees of manufacturer and employees of suppliers that depended on manufacturer. 11 U.S.C.A. § 510.

[29] Corporations 101 445.1

101 Corporations
101XI Corporate Powers and Liabilities
101XI(C) Property and Conveyances
101k441 Conveyances by Corporations
101k445.1 k. Assumption of transferor's liabilities. Most Cited Cases

As general rule, purchaser of assets does not assume liabilities of the seller unless the purchaser expressly agrees to do so or an exception to this rule exists.

[30] Corporations 101 445.1

101 Corporations
101XI Corporate Powers and Liabilities
101XI(C) Property and Conveyances
101k441 Conveyances by Corporations
101k445.1 k. Assumption of transferor's liabilities. Most Cited Cases

Successor liability is equitable exception to general rule that purchaser of assets does not assume liabilities of the seller.

[31] Bankruptcy 51 3073

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3073 k. Adequate protection; sale free of liens. Most Cited Cases

Term “interest,” as used in bankruptcy statute providing for sale of estate assets free and clear of any interest in such assets possessed by entity other than estate, was broad enough to include successor liability claims, so as to authorize assets of a bankrupt automobile manufacturer to be sold free and clear of successor liability claims. 11 U.S.C.A. § 363(f).

[32] Bankruptcy 51 3073

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3073 k. Adequate protection; sale free of liens. Most Cited Cases

Term “interest,” as it is used in bankruptcy statute providing for sale of estate assets free and clear of any interest in such assets possessed by an entity other than estate, includes more than just liens. 11 U.S.C.A. § 363(f).

[33] Bankruptcy 51 3073

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3073 k. Adequate protection; sale free of liens. Most Cited Cases

Congress's use of the word “interest,” in bankruptcy statute providing for sale of estate assets free and clear of any interest in such assets possessed by entity other than estate, while elsewhere providing in Chapter 11 provision that “property dealt with by the plan is free and clear of all claims and interests,” was not indication that term “interest,” as used in the former provision, should not be interpreted to include claims; provisions were disparate provisions, and no conclusion could be drawn from this variance in terminology between them. 11 U.S.C.A. §§ 363(f), 1141(c).

[34] Courts 106 96(7)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(7) k. Particular questions or subject matter. Most Cited Cases
Bankruptcy judge presiding over Chapter 11 case of automobile manufacturer would follow the decisions of other bankruptcy judges in the same district, in absence of plain error, in recognition of the importance of predictability in commercial bankruptcy cases.

[35] Courts 106 89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases
Stare decisis is particularly important in commercial bankruptcy cases.

[36] Bankruptcy 51 3070

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3070 k. Order of court and proceedings therefor in general. Most Cited Cases
Language in order approving proposed sale of assets of bankrupt automobile manufacturer to government-sponsored purchaser free and clear of successor liability claims would be modified, for benefit of holders of future asbestos claims that had not yet sustained any injuries due to their exposure to asbestos, to clarify that injunction against pursuit of successor liability claims against purchaser of debtor's assets would be enforceable only "to the fullest extent constitutionally permissible." 11 U.S.C.A. § 363(f).

[37] Bankruptcy 51 3073

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3073 k. Adequate protection; sale free of liens. Most Cited Cases

Bankruptcy 51 3079

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3079 k. Rights and liabilities of purchasers, and right to purchase. Most Cited Cases
While, pursuant to order approving proposed sale of assets of bankrupt automobile manufacturer to government-sponsored purchaser free and clear of successor liability claims, purchaser could not be held liable, as successor in interest, for the environmental liabilities of the old debtor-manufacturer, purchaser would be liable from day that it received any such properties for its own environmental responsibilities going forward. 11 U.S.C.A. § 363(f).

[38] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases

Bankruptcy 51 3079

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3079 k. Rights and liabilities of purchasers, and right to purchase. Most Cited Cases

Bankruptcy 51 3113

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3113 k. Collective bargaining agreements. Most Cited Cases
Bankruptcy statute dealing with responsibilities of Chapter

11 trustee or debtor-in-possession with respect to retiree benefits of debtor's retired workers imposed such responsibilities only on trustee or debtor-in-possession, not on purchaser outside the ordinary course of Chapter 11 debtor's assets, which had no liability to retirees unless it assumed them. 11 U.S.C.A. §§ 363(b), 1114.

[39] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases
Chapter 11 plan confirmation requirement, which prevented court from confirming proposed plan unless it provided for "continuation after its effective date of payment of all retiree benefits," was not implicated in connection with sale outside the ordinary course of assets of bankrupt car manufacturer, where court had already determined that proposed sale was not sub rosa plan. 11 U.S.C.A. §§ 363(b), 1129(a)(13).

[40] Bankruptcy 51 3070

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3070 k. Order of court and proceedings therefor in general. Most Cited Cases
Automobile dealers' association which did not represent any of dealers with which debtor/car manufacturer had relationships, but which actually represented competing dealers and which had filed amicus brief opposing proposed sale of debtor's assets outside the ordinary course to government-sponsored purchaser, lacked standing to have its comments deemed an objection to proposed sale. 11 U.S.C.A. § 363(b).

[41] Bankruptcy 51 3101

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3101 k. In general. Most Cited Cases

Bankruptcy 51 3102.1

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3102 Assumption, Rejection, or Assignment
51k3102.1 k. In general. Most Cited Cases
Chapter 11 debtor, in connection with a proposed sale of its automobile manufacturing business to purchaser sponsored by federal government, did not have to choose between either assuming its dealer agreements and assigning them to purchaser or rejecting them outright but could seek to ameliorate effects of immediate rejection and to provide dealers with softer landing by negotiating deferred termination agreements, without fear that these deferred termination agreements would be subject to collateral attack based upon claims of coercion. 11 U.S.C.A. §§ 363(b), 365.

[42] Bankruptcy 51 2125

51 Bankruptcy
51II Courts; Proceedings in General
51II(A) In General
51k2124 Power and Authority
51k2125 k. Equitable powers and principles. Most Cited Cases

Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases

Bankruptcy 51 3079

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3079 k. Rights and liabilities of purchasers, and right to purchase. Most Cited Cases
Bankruptcy court, in connection with proposed sale outside the ordinary course of assets of bankrupt automobile manufacturer to purchaser sponsored by the United States government, could not utilize its equitable power to enter "necessary or appropriate" orders, in order to force purchaser to assume certain liabilities of the old debtor-manufacturer based on court's notions of equity. 11

U.S.C.A. § 105(a).

[43] Bankruptcy 51 2125

51 Bankruptcy
51II Courts; Proceedings in General
51II(A) In General
51k2124 Power and Authority
51k2125 k. Equitable powers and principles. Most Cited Cases
Bankruptcy court is not free to use its equitable powers to circumvent the Bankruptcy Code. 11 U.S.C.A. § 105(a).

[44] Bankruptcy 51 2126

51 Bankruptcy
51II Courts; Proceedings in General
51II(A) In General
51k2124 Power and Authority
51k2126 k. Carrying out provisions of Code. Most Cited Cases
Bankruptcy judges, in exercise of their power to enter "necessary or appropriate" orders, are not free to do whatever feels right. 11 U.S.C.A. § 105(a).

[45] Bankruptcy 51 2852

51 Bankruptcy
51VII Claims
51VII(B) Secured Claims
51k2852 k. Amount secured; partial security. Most Cited Cases
"Equal and ratable" provision in indenture for bonds, which provided for enhancement of status of unsecured bondholders to that of secured creditors if liens were thereafter placed on certain manufacturing facilities owned by bankrupt issuer of bonds, was not triggered, in connection with prepetition secured financing that issuer received from federal government where, pursuant to terms of financing agreement, transaction did not place lien on certain excluded collateral, which was defined to include anything that would trigger "equal and ratable" provision; accordingly, bondholders were not entitled to be treated as secured creditors in issuer's Chapter 11 case.

[46] Bankruptcy 51 3069

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3069 k. Time for sale; emergency and sale outside course of business. Most Cited Cases

Bankruptcy 51 3072(1)

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3072 Manner and Terms
51k3072(1) k. In general. Most Cited Cases

Federal Courts 170B 13

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk13 k. Particular cases or questions, justiciable controversy. Most Cited Cases
Any objection to use of Troubled Asset Relief Program (TARP) funds in connection with financing that government had provided to troubled automobile manufacturer was moot after government had used such TARP funds to provide financing, not only before, but after commencement of manufacturer's Chapter 11 case pursuant to post-petition financing order of bankruptcy court; party who had raised no objection to use of TARP funds in connection with post-petition financing order could not belatedly raise issue as basis to object to government's being able to credit-bid the debt associated with financing that it had previously provided in connection with sale of debtor-manufacturer's assets outside ordinary course to purchaser sponsored by government. 11 U.S.C.A. § 363(b).

[47] Bankruptcy 51 3070

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3070 k. Order of court and proceedings therefor in general. Most Cited Cases
Unsecured creditor opposed to proposed sale of assets of bankrupt automobile manufacturer outside the ordinary course of business on credit bid by federal government did not have standing to object to government's use of

Troubled Asset Relief Program (TARP) funds in connection with financing that underlay its credit bid; even assuming that proposed sale somehow injured unsecured creditor, despite undisputed evidence that manufacturer's assets were worth tens of billions of dollars less than its liabilities, and that alternative to proposed sale would be Chapter 7 liquidation in which creditor would receive nothing, creditor could not show that any such injury was fairly traceable to government's use of TARP funds. 11 U.S.C.A. § 363(b).

[48] Bankruptcy 51 3070

51 Bankruptcy
51IX Administration
51IX(B) Possession, Use, Sale, or Lease of Assets
51k3067 Sale or Assignment of Property
51k3070 k. Order of court and proceedings therefor in general. Most Cited Cases
Bankrupt automobile manufacturer's shareholders were not parties aggrieved, with ability to challenge proposed sale of manufacturer's assets outside the ordinary course of business to government-sponsored purchaser, where only alternative to proposed sale was Chapter 7 liquidation, in which it was estimated that debtor's assets would be sold for less than 10% of $82 billion at which they were booked, an amount woefully inadequate to satisfy its roughly $172 billion in debt. 11 U.S.C.A. § 363(b).

***471** Appearances: [FN1]

FN1. Principal participants are shown here. A full listing will be posted when practicable.

Weil, Gotshal & Manges LLP, by Harvey R. Miller (argued), Stephen Karotkin (argued), Joseph H. Smolinsky (argued), New York, NY, for Debtors and Debtors in Possession.

Kramer Levin Naftalis & Frankel LLP, by Kenneth H. Eckstein (argued), Thomas Moers Mayer (argued), Robert Schmidt, Jeffrey S. Trachtman, New York, NY, for the Official Committee of Unsecured Creditors.

Lev L. Dassin, Acting United States Attorney for the Southern District of New York, by David S. Jones (argued), Jeffrey S. Oestericher, Matthew L. Schwartz (argued), Joseph N. Cordaro, and Cadwalader, Wickersham & Taft LLP, by John J. Rapisardi, New York, NY, Counsel to the United States of America.

Cleary Gottlieb Steen & Hamilton, by James L. Bromley (argued), Avram E. Luft, Cohen, Weiss and Simon LLP, by Babette A. Ceccotti (argued), New York, NY, for The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO.

Patton Boggs LLP, by Michael P. Richman (argued), Mark A. Salzberg (pro hac vice) (argued), James C. Chadwick (pro hac vice), Melissa Iachan, New York, NY, for The Unofficial Committee Of Family & Dissident GM Bondholders.

The Coleman Law Firm, by Steve Jakubowski (argued), Elizabeth Richert, Chicago, IL, for Individual Tort Litigants Callan Campbell, Kevin Junso, Edwin Agosto, Kevin Chadwick, and Joseph Berlingieri.

Schnader Harrison Segal & Lewis LLP, by Barry E. Bressler (pro hac vice) (argued), Richard A. Barkasy (pro hac vice), Benjamin P. Deutsch. New York, NY, for Ad Hoc Committee of Consumer Victims of General Motors.

Stutzman, Bromberg, Esserman & Plifka P.C. by Sander L. Esserman (pro hac vice) (argued), Robert T. Brousseau (pro hac vice), Peter D'Apice, Jo E. Hartwick (pro hac vice), Dallas, TX, for Ad Hoc Committee of Asbestos Personal Injury Claimants.

Orrick, Herrington & Sutcliffe LLP, by Roger Frankel (argued), Richard H. Wyron, Washington, D.C., by Lorraine S. McGowen, Alyssa D. Englund, New York, NY, counsel to the Unofficial GM Dealers Committee.

Kennedy, Jennik & Murray, P.C., by Thomas M. Kennedy (argued), Susan M. Jennik, New York, NY, for IUE-CWA.

Nebraska Attorney General Jon Bruning, by Leslie C. Levy, Karen Cordry (argued), Lincoln, NE, for the State of Nebraska and on behalf of the Ad Hoc Committee of State Attorneys General.

Oliver Addison Parker, Lauderdale By The Sea, FL, pro se.

N.W. Bernstein & Associates, LLC, by: Norman W. Bernstein (argued), Rye Brook, NY, for the Trustees of Environmental Conservation and Chemical Corporation Site Trust Fund.

Caplin & Drysdale Chartered, by Elihu Inselbuch, Esq., Rita C. Tobin, Esq., New York, NY, by Peter Van N.

Lockwood, Esq., Ronald E. Reinsel, Esq. (pro hac vice) (argued), Washington, D.C., for Mark Buttita, personal representative of Salvatore Buttita.

Vedder Price P.C., by Michael J. Edelman, Michael L. Schein (argued), Erin Zavalkoff-Babej, New York, NY, for Export Development Canada.

***472** Robinson Brog Leinwand Greene, Genovese & Cluck, P.C., by Russell P. McRory (argued), Fred B. Ringel, Mitchell Greene, Robert R. Leinwand, New York, NY, and Myers & Fuller P.A., by Richard Sox (pro hac vice), Shawn Mercer (pro hac vice), Robert Byerts (pro hac vice), Tallahassee, FL, for the Greater New York Automobile Dealers Association.

Gibson, Dunn & Crutcher LLP, by David Feldman (argued), Matthew J. Williams, Adam H. Offenhartz, New York, NY, for Wilmington Trust Company, Indenture Trustee.

Kelley, Drye & Warren LLP, by David E. Retter, Pamela Bruzzese-Szczygiel, Jennifer A. Christian (argued), New York, NY, for Law Debenture Trust Company of New York, as Proposed Successor Indenture Trustee.

New York State Department of Law by Susan Taylor (argued). Albany, NY, for Environmental Protection Bureau.

Levy Ratner, P.C., New York, NY, by Suzanne Hepner, for United Steelworkers.

Gorlick Kravitz & Listhaus P.C., by Barbara Mehlsack, New York, NY, for International Union of Operating Engineers Locals 18S, 101S, and 832S.

Farella Braun & Martel LLP, by Neil A. Goteiner (argued), Dean M. Gloster (pro hac vice), Nan E. Joesten (pro hac vice), San Francisco, CA, for General Motors Retirees Association.

Public Citizen Litigation Group, by Adina H. Rosenbaum, Allison M. Zieve, Washington, DC, for Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen.

Otterbourg, Steindler, Houston & Rosen, P.C., by Jonathan N. Helfat, Steven B. Soll, New York, NY, for GMAC LLC.

Attorneys for the State of Texas, by J. Casey Roy (argued), Austin, TX, on behalf of the Texas Dep't of Transportation, Motor Vehicle Division.

Diana G. Adams, by Diana G. Adams, Linda A. Riffkin, Tracy Hope Davis, Andrew D. Velez-Rivera, Brian Shoichi Masumoto, New York, NY, United States Trustee.

DECISION ON DEBTORS' MOTION FOR APPROVAL OF (1) SALE OF ASSETS TO VEHICLE ACQUISITION HOLDINGS LLC; (2) ASSUMPTION AND ASSIGNMENT OF RELATED EXECUTORY CONTRACTS; AND (3) ENTRY INTO UAW RETIREE SETTLEMENT AGREEMENT

ROBERT E. GERBER, Bankruptcy Judge.

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(Cite as: 407 B.R. 463)

***473** In this contested matter in the jointly administered chapter 11 cases of Debtors **General Motors** Corporation and certain of its subsidiaries (together, "**GM**"), the Debtors move for an order, pursuant to section 363 of the **Bankruptcy** Code, approving GM's sale of the bulk of its assets (the "**363 Transaction**"), pursuant to a "Master Sale and Purchase Agreement" and related documents (the "**MPA**"), to Vehicle Acquisitions Holdings LLC (the "**Purchaser**") [FN2]-a purchaser sponsored by the U.S. Department of the Treasury (the "**U.S. Treasury**")-free and clear of liens, claims, encumbrances, and other interests. The Debtors also seek approval of the assumption and assignment of the executory contracts that would be needed by the Purchaser, and of a settlement with the United Auto Workers ("**UAW**") pursuant to an agreement (the "**UAW Settlement Agreement**") under which GM would satisfy obligations to an estimated 500,000 retirees.

> FN2. When discussing the mechanics of the 363 Transaction, the existing GM will be referred to as "**Old GM,**" and the Purchaser will be referred to as "**New GM.**"

GM's motion is supported by the Creditors' Committee; the U.S. Government (which has advanced approximately $50 billion to GM, and is GM's largest pre-and post-petition creditor); the Governments of Canada and Ontario (which ultimately will have advanced about $9.1 billion); the UAW (an affiliate of which is GM's single largest unsecured creditor); ***474** the indenture trustees for GM's approximately $27 billion in unsecured bonds; and an ad hoc committee representing holders of a majority of those bonds.

But the motion has engendered many objections and limited objections, by a variety of others. The objectors include, among others, a minority of the holders of GM's unsecured bonds (most significantly, an ad hoc committee of three of them (the "**F & D Bondholders Committee**"), holding approximately .01% of GM's bonds),[FN3] who contend, among other things, that GM's assets can be sold only under a chapter 11 plan, and that the proposed section 363 sale amounts to an impermissible "*sub rosa* " plan.

> FN3. When it filed its objection, the F & D Bondholders Committee, identifying itself as the "Family & Dissident" Bondholders Committee, said it was "representing the interests of" 1,500 bondholders, with bond holdings "believed to exceed $400 million." (F & D Bondholder Comm. Obj. at 1). But even after it filed the second of its Fed.R.Bankr.P.2019 statements, it identified no other bondholders for whom it was speaking, or provide the holdings, purchases and sales information for any others that Rule 2019 requires. Under these circumstances, the Court must consider that the committee speaks for just those three bondholders.

Objectors and limited objectors also include tort litigants who object to provisions in the approval order limiting successor liability claims against the Purchaser; asbestos litigants with similar concerns, along with concerns as to asbestos ailments that have not yet been discovered; and non-UAW unions ("**Splinter Unions**") speaking for their retirees, concerned that the Purchaser does not plan to treat their retirees as well as the UAW's retirees.

On the most basic issue, whether a 363 sale is proper, GM contends that this is exactly the kind of case where a section 363 sale is appropriate and indeed essential-and where under the several rulings of the Second Circuit and the Supreme Court in this area, GM's business can be sold, and its value preserved, before the company dies. The Court agrees. GM cannot survive with its continuing losses and associated loss of liquidity, and without the governmental funding that will expire in a matter of days. And there are no options to this sale-especially any premised on the notion that the company could survive the process of negotiations and litigation that characterizes the plan confirmation process.

As nobody can seriously dispute, the only alternative to an immediate sale is liquidation-a disastrous result for GM's creditors, its employees, the suppliers who depend on GM for their own existence, and the communities in which GM operates. In the event of a liquidation, creditors now trying to increase their incremental recoveries would get nothing.

Neither the Code, nor the caselaw-especially the caselaw in the Second Circuit-requires waiting for the plan confirmation process to take its course when the inevitable consequence would be liquidation. Bankruptcy courts have the power to authorize sales of assets at a time when there still is value to preserve-to prevent the death of the patient on the operating table.

Nor can the Court accept various objectors' contention that there here is a *sub rosa* plan. GM's assets simply are being sold, with the consideration to GM to be hereafter distributed to stakeholders, consistent with their statutory

priorities, under a subsequent plan. Arrangements that will be made by the Purchaser do not affect the distribution of the *Debtor's* property, and will address wholly different needs and concerns-arrangements that the Purchaser needs to create a new GM ***475** that will be lean and healthy enough to survive.

Issues as to how any approval order should address *successor liability* are the only truly debatable issues in this case. And while textual analysis is ultimately inconclusive and caselaw on a nationwide basis is not uniform, the Court believes in *stare decisis;* it follows the caselaw in this Circuit and District in holding that to the extent the Purchaser has not voluntarily agreed to accept successor liability, GM's property-like that of Chrysler, just a few weeks ago-may be sold free and clear of claims.

Those and other issues are addressed below. GM's motion is granted. The following are the Court's Findings of Fact, Conclusions of Law, and bases for the exercise of its discretion in connection with this determination.

Findings of Fact [FN4]

> FN4. To avoid making this lengthy decision even longer, the Court has limited its citations in its Findings of Fact to those matters where they are most useful.

After an evidentiary hearing,[FN5] the Court makes the following Findings of Fact.

> FN5. In accordance with the Court's Case Management Order # 1, direct testimony was presented by affidavit and cross-examination and subsequent questioning proceeded live. After cross-examination, the Court found all witnesses credible, and takes their testimony as true.

1. Background

GM is primarily engaged in the worldwide production of cars, trucks, and parts. It is the largest Original Equipment Manufacturer ("**OEM**") in the U.S., and the second largest in the world.

GM has marketed cars and trucks under many brands-most of them household names in the U.S.-including Buick, Cadillac, Chevrolet, Pontiac, GMC, Saab, Saturn, HUMMER, and Opel. It operates in virtually every country in the world.

GM maintains its executive offices in Detroit, Michigan, and its major financial and treasury operations in New York, New York. As of March 31, 2009, GM employed approximately 235,000 employees worldwide, of whom 163,000 were hourly employees and 72,000 were salaried. Of GM's 235,000 employees, approximately 91,000 are employed in the U.S. Approximately 62,000 (or 68%) of those U.S. employees were represented by unions as of March 31, 2009. The UAW represents by far the largest portion of GM's U.S. unionized employees, representing approximately 61,000 employees.

As of March 31, 2009, GM had consolidated reported global assets and liabilities of approximately $82 billion, and $172 billion, respectively. However, its assets appear on its balance sheet at book value, as contrasted to a value based on any kind of valuation or appraisal. And if GM had to be liquidated, its liquidation asset value, as discussed below, would be less than 10% of that $82 billion amount.

While GM has publicly traded common stock, no one in this chapter 11 case has seriously suggested that GM's stock is "in the money," or anywhere close to that. By any standard, there can be no doubt that GM is insolvent. In fact, as also discussed below, if GM were to liquidate, its unsecured creditors would receive nothing on their claims.

2. GM's Dealer Network

Substantially all of GM's worldwide car and truck deliveries (totaling 8.4 million vehicles in 2008) are marketed through independent retail dealers or distributors. ***476** GM relies heavily on its relationships with dealers, as substantially all of its retail sales are through its network of independent retail dealers and distributors.

The 363 Transaction contemplates the assumption by GM and the assignment to New GM of dealer franchise agreements relating to approximately 4,100 of its 6,000 dealerships, modified in ways to make GM more competitive (as modified, "**Participation Agreements**"). But GM cannot take all of the dealers on the same basis. At the remaining dealer's option, GM will either reject those agreements, or assume modified agreements, called "**Deferred Termination Agreements.**"

The Deferred Termination Agreements will provide dealers with whom GM cannot go forward a softer landing and

orderly termination. GM is providing approximately 17 months' notice of termination.

As of the time of the hearing on this motion, approximately 99% of the continuing dealers had signed Participation Agreements and 99% of the dealers so affected had signed Deferred Termination Agreements.

The agreements of both types include waivers of rights that dealers would have in connection with their franchises. In accordance with a settlement with the Attorneys General of approximately 45 states (the "**AGs**"), the Debtors and the Purchaser agreed to modifications to the Purchase Agreement and the proposed approval order under which (subject to the more precise language in the proposed order) the Court makes no finding as to the extent any such modifications are enforceable, and any disputes as to that will be resolved locally.

3. GM's Suppliers

As the nation's largest automobile manufacturer, GM uses the services of thousands of suppliers-resulting in approximately $50 billion in annual supplier payments. In North America alone, GM uses a network of approximately 11,500 suppliers. In addition, there are over 600 suppliers whose sales to GM represent over 30% of their annual revenues. Thus hundreds, if not thousands, of automotive parts suppliers depend, either in whole or in part, on GM for survival.

4. GM's Financial Distress

Historically, GM was one of the best performing OEMs in the U.S. market. But with the growth of competitors with far lower cost structures and dramatically lower benefit obligations, GM's leadership position in the U.S. began to decline. At least as a result of that lower cost competition and market forces in the U.S. and abroad (including jumps in the price of gasoline; a massive recession (with global dislocation not seen since the 1930s); a dramatic decline in U.S. domestic auto sales; and a freeze-up in consumer and commercial credit markets), GM suffered a major drop in new vehicle sales and in market share-from 45% in 1980 to a forecast 19.5% in 2009.

The Court does not need to make further factual findings as to the many causes for GM's difficulties, and does not do so. Observers might differ as to the causes or opine that there were others as well, and might differ especially with respect to which causes were most important. But what is clear is that, especially in 2008 and 2009, GM suffered a steep erosion in revenues, significant operating losses, and a dramatic loss of liquidity, putting its future in grave jeopardy.

5. U.S. Government Assistance

By the fall of 2008, GM was in the midst of a severe liquidity crisis, and its ability to continue operations grew more and more ***477** uncertain with each passing day. As a result, in November 2008, GM was compelled to seek financial assistance from the U.S. Government.

The U.S. Government understood the draconian consequences of the situation-one that affected not just GM, but also Chrysler, and to a lesser extent, Ford (the "**Big Three**"). And the failure of any of the Big Three (or worse, more than one of them) might well bring grievous ruin on the thousands of suppliers to the Big Three (many of whom have already filed their own bankruptcy cases, in this District, Delaware, Michigan and elsewhere); other businesses in the communities where the Big Three operate; dealers throughout the country; and the states and municipalities who looked to the Big Three, their suppliers and their employees for tax revenues.

The U.S. Government's fear-a fear this Court shares, if GM cannot be saved as a going concern-was of a systemic failure throughout the domestic automotive industry and the significant harm to the overall U.S. economy that would result from the loss of hundreds of thousands of jobs [FN6] and the sequential shutdown of hundreds of ancillary businesses if GM had to cease operations.

> FN6. More than 500,000 workers are employed by companies in the U.S. that manufacture parts and components used by automakers.

Thus in response to the troubles plaguing the American automotive industry, the U.S. Government, through the U.S. Treasury and its Presidential Task Force on the Auto Industry (the "**Auto Task Force**"), implemented various programs to support and stabilize the domestic automotive industry-including support for consumer warranties and direct loans. Thus at GM's request in late 2008, the U.S. Treasury determined to make available to GM billions of dollars in emergency secured financing in order to sustain GM's operations while GM developed a new business plan. At the time that the U.S. Treasury first extended credit to GM, there was absolutely no other source of financing

available. No party other than Treasury conveyed its willingness to loan funds to GM and thereby enable it to continue operating.

The first loan came in December 2008, after GM submitted a proposed viability plan to Congress. That plan contemplated GM's shift to smaller, more fuel-efficient cars, a reduction in the number of GM brand names and dealerships, and a renegotiation of GM's agreement with its principal labor union. As part of its proposed plan, GM sought emergency funding in the form of an $18 billion federal loan.

But the U.S. Government was not of a mind to extend a loan that large, and after negotiations, the U.S. Treasury and GM entered into a term loan agreement on December 31, 2008 (the "**Treasury Prepetition Loan**"), that provided GM up to $13.4 billion in financing on a senior secured basis. Under that facility, GM immediately borrowed $4 billion, followed by $5.4 billion less than a month later, and the remaining $4 billion on February 17,2009.

At the time this loan was made, GM was in very weak financial condition, and the loan was made under much better terms than could be obtained from any commercial lender-if any lender could have been found at all. But the Court has no doubt whatever, and finds, that the Treasury Prepetition Loan was intended to be, and was, a loan and not a contribution of equity. As contrasted with other TARP transactions that involved the U.S. Treasury making direct investments in troubled ***478** companies in return for common or preferred equity, the U.S. Treasury structured the Treasury Prepetition Loan as a loan with the only equity received by the U.S. Treasury being in the form of two warrants. The agreement had terms and covenants of a loan rather than an equity investment. The U.S. Treasury sought and received first liens on many assets, and second liens on other collateral. The transaction also had separate collateral documents. And the U.S. Treasury entered into intercreditor agreements with GM's other senior secured lenders in order to agree upon the secured lenders' respective prepetition priorities.

The Court further finds, as a fact or mixed question of fact and law, looking at the totality of the circumstances, that there was nothing inequitable about the way the U.S. Treasury behaved in advancing these funds. Nor did the U.S. Treasury act inequitably to GM's creditors, who were assisted, and not injured, by the U.S. Treasury's efforts to keep GM alive and to forestall a liquidation of the company.

GM had provided a business plan to Congress under which GM might restore itself to profitability, but it was widely perceived to be unsatisfactory. The U.S. Treasury required GM to submit a proposed business plan to demonstrate its future competitiveness that went significantly farther than the one GM had submitted to Congress. As conditions to the U.S. Treasury's willingness to provide financing, GM was to:

> (i) reduce its approximately $27 billion in unsecured public debt by no less than two-thirds;
>
> (ii) reduce its total compensation to U.S. employees so that by no later than December 31, 2009, such compensation would be competitive with Nissan, Toyota, or Honda in the U.S.;
>
> (iii) eliminate compensation or benefits to employees who had been discharged, furloughed, or idled, other than customary severance pay;
>
> (iv) apply, by December 31, 2009, work rules for U.S. employees in a manner that would be competitive with the work rules for employees of Nissan, Toyota, or Honda in the U.S.; and
>
> (v) make at least half of the $20 billion contribution that GM was obligated to make to a VEBA [FN7] Trust for UAW retirees ("**VEBA Trust**") in the form of common stock, rather than cash.
>
> > FN7. GM has used trusts qualified as "voluntary employee beneficiary associations" under the Internal Revenue Code (each, a "**VEBA**"), to hold reserves to meet GM's future obligations to provide healthcare and life insurance benefits ("**OPEB**") to its salaried and hourly employees upon retirement. In substance, the employer makes contributions to the VEBA, and the VEBA funds the health benefits to the retirees.

Thereafter, in March 2009, Treasury indicated that if GM was unable to complete an effective out-of-court restructuring, it should consider a new, more aggressive, viability plan under an expedited Court-supervised process to avoid further erosion of value. In short, GM was to file a bankruptcy petition and take prompt measures to preserve its value while there was still value to save.

The Treasury Prepetition Loan agreement (whose formal name was "Loan and Security Agreement," or "**LSA**") provided that, if, by March 31, 2009, the President's designee hadn't issued a certification that GM had taken all steps necessary to achieve long-term viability, then the loans due to Treasury would become due and payable 30 days thereafter. And on March 30, the President announced that the viability plan proposed by GM was not ***479** satisfactory, and didn't justify a substantial new investment of taxpayer dollars.

But rather than leaving GM to simply go into liquidation, the President stated that the U.S. Government would provide assistance to avoid such a result, *if* GM took the necessary additional steps to justify that assistance-including reaching agreements with the UAW, GM's bondholders, and the VEBA Trust. The conditions to federal assistance required substantial debt reduction and the submission of a revised business plan that was more aggressive in both scope and timing.

As an alternative to liquidation, the President indicated that the U.S. Treasury would extend to GM adequate working capital for a period of another 60 days to enable it to continue operations. And as GM's largest secured creditor, the U.S. Treasury would negotiate with GM to develop and implement a more aggressive and comprehensive viability plan. The President also stated that GM needed a "fresh start to implement the restructuring plan," which "may mean using our [B]ankruptcy [C]ode as a mechanism to help [it] restructure quickly and emerge stronger." The President explained:

> What I'm talking about is using our existing legal structure as a tool that, with the backing of the U.S. Government, can make it easier for General Motors ... to *quickly* clear away old debts that are weighing [it] down so that [it] can get back on [its] feet and onto a path to success; a tool that we can use, even as workers stay on the job building cars that are being sold.
>
> What I'm not talking about is a process where a company is simply broken up, sold off, and no longer exists. We're not talking about that. And what I'm *not talking about is a company that's stuck in court for years, unable to get out.*[FN8]

FN8. Emphasis added.

The U.S. Treasury and GM subsequently entered into amended credit agreements for the Treasury Prepetition Loan to provide for an additional $2 billion in financing that GM borrowed on April 24, 2009, and another $4 billion that GM borrowed on May 20, 2009. The funds advanced to GM under the Treasury Prepetition Loan-ultimately $19.4 billion in total (all on a senior secured basis)-permitted GM to survive through the date of the filing of its bankruptcy case.

On June 1, 2009 (the "**Filing Date**"), GM filed its chapter 11 petition in this Court.

6. GM's First Quarter Results

On May 8, 2009, about three weeks before the Filing Date, GM announced its first quarter 2009 results. They presented a grim financial picture, and equally grim trends. Specifically:

> (a) GM's total net revenue decreased by $20 billion (or 47.1%) in the first three months of 2009, as compared to the corresponding period in 2008;
>
> (b) Operating losses increased by $5.1 billion from the prior quarter;
>
> (c) During this same period, GM had negative cash flow of $9.4 billion;
>
> (d) Available liquidity deteriorated by $2.6 billion; and
>
> (e) Sales by GM dealers in the U.S. fell to approximately 413,000 vehicles in that first quarter-a decline of approximately 49% as compared to the corresponding period in 2008.

7. The 363 Transaction

As noted above, in connection with providing financing, Treasury advised GM ***480** that, if an out-of-court restructuring was not possible,[FN9] GM should consider the bankruptcy process. That would enable GM to implement a transaction under which substantially all GM's assets would be purchased by a Treasury-sponsored purchaser (subject to any higher or better offer), in an expedited process under section 363 of the Code.

FN9. GM tried to accomplish an out-of-court re-

structuring, as suggested, but was unsuccessful.

Under this game plan, the Purchaser would acquire the purchased assets; create a New GM; and operate New GM free of any entanglement with the bankruptcy cases. If the sale could be accomplished quickly enough, before GM's value dissipated as a result of continuing losses and consumer uncertainty, the 363 sale would thereby preserve the going concern value; avoid systemic failure; provide continuing employment; protect the many communities dependent upon the continuation of GM's business, and restore consumer confidence.

To facilitate the process, the U.S. Treasury and the governments of Canada and Ontario (through their Export Development Canada ("**EDC**")) [FN10] agreed to provide DIP financing for GM through the chapter 11 process. But they would provide the DIP financing *only* if the sale of the purchased assets occurred on an *expedited* basis. That condition was imposed to:

> FN10. The Canadian EDC participation was sizeable-approximately $3 billion with approximately an additional $6 billion to be provided later.

(i) preserve the value of the business;

(ii) restore (or at least minimize further loss of) consumer confidence;

(iii) mitigate the increasing damage that GM itself, and the industry, would suffer if GM's major business operations were to remain in bankruptcy; and

(iv) avoid the enormous costs of financing a lengthy chapter 11 case.

Treasury also agreed to provide New GM with adequate post-acquisition financing.

Importantly, the DIP financing to be furnished by the U.S. Treasury and EDC is the only financing that is available to GM. The U.S. Treasury (with its Canadian EDC co-lender) is the only entity that is willing to extend DIP financing to GM. Other efforts to obtain such financing have been unsuccessful. Absent adequate DIP financing, GM will have no choice but to liquidate. But the U.S. Government has stated it will not provide DIP financing without the 363 Transaction, and the DIP financing will come to an end if the 363 Transaction is not approved by July 10. Without such financing, these cases will plunge into a liquidation.

Alternatives to a sale have turned out to be unsuccessful, and offer no hope of success now. In accordance with standard section 363 practice, the 363 Transaction was subject to higher and better offers, but none were forthcoming. The Court finds this hardly surprising. Only the U.S. and Canadian Governmental authorities were prepared to invest in GM-and then not so much by reason of the economic merit of the purchase, but rather to address the underlying societal interests in preserving jobs and the North American auto industry, the thousands of suppliers to that industry, and the health of the communities, in the U.S. and Canada, in which GM operates.

In light of GM's substantial secured indebtedness, approximately $50 billion, the only entity that has the financial wherewithal and is qualified to purchase the ***481** assets-and the only entity that has stepped forward to make such a purchase-is the U.S. Treasury-sponsored Purchaser. But the Purchaser is willing to proceed only under an expedited sale process under the Bankruptcy Code.

8. The Liquidation Alternative

In connection with its consideration of alternatives, GM secured an analysis (the "**Liquidation Analysis**"), prepared by AlixPartners LLP, of what GM's assets would be worth in a liquidation. The Liquidation Analysis concluded that the realizable value of the assets of GM (net of the costs of liquidation) would range between approximately $6 billion and $10 billion. No evidence has been submitted to the contrary. This was in the context of an assumed $116.5 billion in general unsecured claims, though this could increase with lease and contract rejection claims and pension termination claims.

While the Liquidation Analysis projected some recoveries for secured debt and administrative and priority claims, it concluded that there would be *no recovery whatsoever* for unsecured creditors. The Court has no basis to doubt those conclusions. The Court finds that in the event of a liquidation, unsecured creditors would recover nothing.

9. Fairness of the Transaction

Before the 363 Transaction was presented for Court approval, GM's Board of Directors (the "**Board**") (all but one of whose members were independent, and advised by the

law firm of Cravath, Swaine & Moore), received a fairness opinion, dated May 31, 2009 (the "**Fairness Opinion**"), from Evercore Group L.L.C. ("**Evercore**").

The Fairness Opinion's conclusion was that the purchase price was fair to GM, from a financial point of view. No contrary evidence has been submitted to the Court.

10. Specifics of the Transaction

The sale transaction, as embodied in the MPA and related documents, is complex. Its "deal points" can be summarized as follows:

(a) Acquired and Excluded Assets

Under the Sale, New GM will acquire all of Old GM's assets, with the exception of certain assets expressly excluded under the MPA (respectively, the "**Purchased Assets**" and the "**Excluded Assets**"). The Excluded Assets chiefly consist of:

(i) $1.175 billion in cash or cash equivalents;

(ii) equity interests in certain Saturn and other entities;

(iii) certain real and personal property;

(iv) bankruptcy avoidance actions;

(v) certain employee benefit plans; and

(vi) certain restricted cash and receivables.

(b) Assumed and Excluded Liabilities

Old GM will retain all liabilities except those defined in the MPA as "**Assumed Liabilities.**" The Assumed Liabilities include:

(i) product liability claims arising out of products delivered at or after the Sale transaction closes (the "***Closing*** ");

(ii) the warranty and recall obligations of both Old GM and New GM;

(iii) all employment-related obligations and liabilities under any assumed employee benefit plan relating to employees that are or were covered by the UAW collective bargaining agreement;

and-by reason of an important change that was made in the MPA after the filing of the motion-

482** (iv) broadening the first category substantially, *all* product liability claims arising from accidents or other discrete incidents arising from operation of GM vehicles occurring subsequent to the closing of the 363 Transaction, ***regardless *of when the product was purchased.*

The liabilities being retained by Old GM include:

(i) product liability claims arising out of products delivered prior to the Closing (to the extent they weren't assumed by reason of the change in the MPA after the filing of objections);

(ii) liabilities for claims arising out of exposure to asbestos;

(iii) liabilities to third parties for claims based upon "[c]ontract, tort or any other basis";

(iv) liabilities related to any implied warranty or other implied obligation arising under statutory or common law; and

(v) employment-related obligations not otherwise assumed, including, among other obligations, those arising out of the employment, potential employment, or termination of any individual (other than an employee covered by the UAW collective bargaining agreement) prior to or at the Closing.

(c) Consideration

Old GM is to receive consideration estimated to be worth approximately $45 billion, plus the value of equity interests that it will receive in New GM. It will come in the following forms:

(i) a credit bid by the U.S. Treasury and EDC, who will credit bid the majority of the indebtedness outstanding under their DIP facility and the Treasury Prepetition Loan;

(ii) the assumption by New GM of approximately $6.7 billion of indebtedness under the DIP facilities, plus an

additional $1.175 billion to be advanced by the U.S. Treasury under a new DIP facility (the "**Wind Down Facility**") whose proceeds will be used by Old GM to wind down its affairs;

(iii) the surrender of the warrant that had been issued by Old GM to Treasury in connection with the Treasury Prepetition Loan;

(iv) 10% of the post-closing outstanding shares of New GM, plus an additional 2% if the estimated amount of allowed prepetition general unsecured claims against Old GM exceeds $35 billion;

(v) two warrants, each to purchase 7.5% of the post-closing outstanding shares of New GM, with an exercise price based on a $15 billion equity valuation and a $30 billion equity valuation, respectively; and

(vi) the assumption of liabilities, including those noted above.

(d) Ownership of New GM

Under the terms of the Sale, New GM will be owned by four entities.

(i) Treasury will own 60.8% of New GM's common stock on an undiluted basis. It also will own $2.1 billion of New GM Series A Preferred Stock;

(ii) EDC will own 11.7% of New GM's common stock on an undiluted basis. It also will own $400 million of New GM Series A Preferred Stock;

(iii) A New Employees' Beneficiary Association Trust ("**New VEBA**") will own 17.5% of New GM's common stock on an undiluted basis. It also will own $6.5 billion of New GM's Series A Preferred Stock, and a 6-year warrant to acquire 2.5% of New GM's common stock, with an exercise price based on $75 billion total equity value; and

***483** (iv) Finally, if a chapter 11 plan is implemented as contemplated under the structure of the Sale transaction, Old GM will own 10% of New GM's common stock on an undiluted basis. In addition, if the allowed prepetition general unsecured claims against Old GM exceed $35 billion, Old GM will be issued an additional 10 million shares, amounting to approximately 2% of New GM's common stock. Old GM will also own the two warrants mentioned above.

(e) Other Aspects of Transaction

New GM will make an offer of employment to all of the Sellers' non-unionized employees and unionized employees represented by the UAW. Substantially all of old GM's executory contracts with direct suppliers are likely to be assumed and assigned to New GM.

After the Closing, New GM will assume all liabilities arising under express written emission and limited warranties delivered in connection with the sale of new vehicles or parts manufactured or sold by Old GM.

One of the requirements of the U.S. Treasury, imposed when the Treasury Prepetition Loan was put in place, was the need to negotiate a new collective bargaining agreement which would allow GM to be fully competitive, and "equitize"-*i.e.*, convert to equity-at least one half of the obligation GM had to the UAW VEBA. Ultimately GM did so. New GM will make future contributions to the New VEBA that will provide retiree health and welfare benefits to former UAW employees and their spouses. Also, as part of the 363 Transaction, New GM will be the assignee of revised collective bargaining agreements with the UAW, the terms of which were recently ratified-though contingent upon the approval of the entirety of these motions.

(f) The Proposed Sale Order

Though GM's request has been narrowed, as noted above, to provide that New GM will assume liability for product liability claims arising from operation of GM vehicles occurring after the closing of the 363 Transaction (**regardless** of when the product was purchased), GM asks this Court, as in the *Chrysler* case, to authorize the Sale free and clear of all other "liens, claims, encumbrances and other interests," including, specifically, "all successor liability claims."

To effectuate this result, GM has submitted a proposed order to the Court (the "**Proposed Sale Order**") that contains provisions directed at cutting off successor liability except in the respects where successor liability was contractually assumed.

First, the Proposed Sale Order contains a finding-and a decretal provision to similar effect-that the Debtors may

sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

Second, the Proposed Sale Order would enjoin all persons (including "litigation claimants") holding liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, from asserting them against New GM or the Purchased Assets. FN11

FN11. Proposed Sale Order ¶ 8.

11. Contingent Liabilities

Certain types of GM liabilities are contingent and difficult to quantify. GM's most recent quarterly report noted present valued contingent liabilities of $934 million for product liability, $627 million ***484** for asbestos liability, $307 million for other litigation liability, and $294 million for environmental liability.

12. Agreement with UAW

Workers in the U.S. do not have government provided healthcare benefits of the type that the employees of many of GM's foreign competitors do. Over the years, GM and the other members of the Big Three committed themselves to offer many of those healthcare benefits, resulting in decreased competitiveness and enormous liabilities. GM tried to reduce the costs of healthcare benefits for its employees, but these costs continued to substantially escalate. Many of these costs were in the form of obligations to pay healthcare costs of union employees on retirement.

In 2007 and 2008, GM settled various controversies with respect to its healthcare obligations by entering into an agreement (the "**2008 UAW Settlement Agreement**"), generally providing that responsibility for providing retiree healthcare would permanently shift from GM to a new plan that was independent of GM. GM would no longer have to pay for the benefits themselves, but instead would have to make specified contributions aggregating approximately $20.56 billion to be made by GM into the VEBA Trust. The 2008 UAW Settlement Agreement, therefore, fixed and capped GM's obligations-but in a very large amount.

As part of the 363 Transaction, the Purchaser and the UAW have reached a resolution addressing the ongoing provision of those benefits. New GM will make contributions to the New VEBA, which will have the obligation to fund the UAW retiree health and welfare benefits. And under the "**UAW Retiree Settlement Agreement,**" New GM will put value into the New VEBA, which will then have the obligation to fund retiree medical benefits for the Debtors' retirees and surviving spouses represented by the UAW (the "**UAW-Represented Retirees**").

New GM will also assume modified and duly ratified collective bargaining agreements entered into by and between the Debtors and the UAW.

13. Need for Speed

GM and the U.S. Treasury say that the 363 Transaction must be approved and completed quickly. The Court finds that they are right.

Absent prompt confirmation that the sale has been approved and that the transfer of the assets will be implemented, GM will have to liquidate. There are no realistic alternatives available.

There are no merger partners, acquirers, or investors willing and able to acquire GM's business. Other than the U.S. Treasury and EDC, there are no lenders willing and able to finance GM's continued operations. Similarly, there are no lenders willing and able to finance GM in a prolonged chapter 11 case.

The continued availability of the financing provided by Treasury is expressly conditioned upon approval of this motion by July 10, and prompt closing of the 363 Transaction by August 15. Without such financing, GM faces immediate liquidation.

The Court accepts as accurate and truthful the testimony by GM CEO Fritz Henderson at the hearing:

> Q. Now, if the U.S. Treasury does not fund on July 10th and the sale order is not entered by that date, what options are there for GM at that point?
>
> A. Well, if they don't continue, we would liquidate.FN12

FN12. Audio Recording of Testimony of June 30, 2009.

***485** The July 10 deadline is important because the U.S.

Treasury, like GM itself, has been very concerned about the business status of the company in a bankruptcy process.[FN13] GM did worse than expected in fleet sales in June, as fleet sales customers pulled back their orders because they didn't know their status in the bankruptcy. Although the company did *better* on retail sales than expected in June, it did so for a number of reasons, one of which was the expectation that the chapter 11 case would move quickly, and that the company, in the 363 process, would be successful.[FN14] And results were "still terrible."[FN15]

FN13. *Id.* at 85.

FN14. *Id.* at 85-86.

FN15. *Id.* at 103.

Even if funding were available for an extended bankruptcy case, many consumers would not consider purchasing a vehicle from a manufacturer whose future was uncertain and that was entangled in the bankruptcy process.

Thus the Court agrees that a lengthy chapter 11 case for the Debtors is not an option. It also agrees with the Debtors and the U.S. Government that it is not reasonable to expect that a reorganization plan could be confirmed in the next 60 days (*i.e.*, 90 days from the Filing Date).

The Auto Task Force talked to dozens of experts, industry consultants, people who had observed **General Motors** for decades, management, and people who were well versed in the **bankruptcy** process as part of its planning and work on this matter. None of them felt that GM could survive a traditional chapter 11 process. The Auto Task Force learned of views by one of the leading commentators on GM that GM would be making a tragic mistake by pursuing a bankruptcy filing. It became clear to the Auto Task Force that a bankruptcy with a traditional plan confirmation process would be so injurious to GM as to not allow for GM's viability going forward.[FN16]

FN16. Audio Recording of Testimony of July 1, 2009.

The Court accepts this testimony, and so finds. A 90 day plan confirmation process would be wholly unrealistic. In fact, the notion that a reorganization with a plan confirmation could be completed in 90 days in a case of this size and complexity is ludicrous, especially when one is already on notice of areas of likely controversy.

14. Ultimate Facts

The Court thus makes the following findings of ultimate facts:

1. There is a good business reason for proceeding with the 363 Transaction now, as contrasted to awaiting the formulation and confirmation of a chapter 11 plan.

2. There is an articulated business justification for proceeding with the 363 Transaction now.

3. The 363 Transaction is an appropriate exercise of business judgment.

4. The 363 Transaction is the only available means to preserve the continuation of GM's business.

5. The 363 Transaction is the only available means to maximize the value of GM's business.

6. There is no viable alternative to the 363 Transaction.

7. The only alternative to the 363 Transaction is liquidation.

8. No unsecured creditor will here get less than it would receive in a liquidation.

9. The UAW Settlement is fair and equitable, and is in the best interests***486** of both the estate and UAW members.

10. The secured debt owing to the U.S. Government and EDC (both post-petition and, to the extent applicable, prepetition) is not subject to recharacterization as equity or equitable subordination, and could be used for a credit bid.

11. The Purchaser is a purchaser in good faith.

Discussion

The substantive objections break down into a number of categories by concept, and the Court thus considers them in that fashion.

1. Sale Under Section 363

Determining the propriety of the 363 Transaction requires confirming that section 363 can be utilized for the sale of this much of GM's assets before confirmation of a reorganization plan; that the necessary showings for approval of any section 363 sale have been made; that the 363 Transaction is not a "*sub rosa* " plan; and that various related issues have been satisfactorily resolved. The Court considers these in turn.

(a) Utilization of Section 363

[1] The F & D Bondholders, bondholder Oliver Addison Parker ("**Parker**") and several other objectors contend that by disposing of so much of its assets in a single section 363 sale, GM improperly utilizes section 363. Implicit in that argument is the contention that even under the facts here, section 363 cannot be used to dispose of all or the bulk of a debtor's assets, and that such can be achieved only by means of a reorganization plan. The Court disagrees.

As usual, the Court starts with textual analysis. With exceptions not relevant here, section 363 of the Bankruptcy Code provides, in relevant part:

> (b)(1) The trustee,[FN17] after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate....
>
> FN17. In all respects relevant here, where (as here, and as is the norm) the debtor remains in possession and the court has not ordered otherwise, the debtor has the rights of the trustee. *See* Bankruptcy Code section 1107(a) ("Subject to ... such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation ... of a trustee serving in a case under this chapter.").

Notably, section 363 has no carveouts from its grant of authority when applied in cases under chapter 11. Section 363 does not provide, in words or substance, that it may not be used in chapter 11 cases for dispositions of property exceeding any particular size, or where the property is of such importance that it should alternatively be disposed of under a plan. Nor does any other provision of the Code so provide.

Then, section 1123 of the Code-captioned "Contents of plan," a provision in chapter 11 which sets forth provisions that a chapter 11 reorganization plan *must* do or contain, and *may* do or contain-provides, as one of the things that a plan *may* do:

> provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests.... FN18
>
> FN18. Section 1123(b)(4).

But neither section 363 nor section 1123(b)(4) provides that resort to 1123(b)(4) is the *only* way by which all or substantially all of the assets can be sold in ***487** a chapter 11 case. Most significantly, neither section 1123(b)(4) nor any other section of the Code trumps or limits section 363, which by its plain meaning permits what GM here proposes to do.

[2] However, the issue cannot be addressed by resort to "plain meaning" or textual analysis alone. GM's ability to sell the assets in question under section 363 is governed by an extensive body of caselaw. Bankruptcy courts in this Circuit decide issues of the type now before the Court under binding decisions of the U.S. Supreme Court and the Second Circuit Court of Appeals, each of which (particularly the latter) has spoken to the issues here. And bankruptcy courts also look to other bankruptcy court decisions, which, in this District and elsewhere, have dealt with very similar facts. While an opinion of one bankruptcy judge in this District is not, strictly speaking, binding on another, it is the practice of this Court to grant great respect to the earlier bankruptcy court precedents in this District,[FN19] particularly since they frequently address issues that have not been addressed at the Circuit level.

> FN19. *See, e.g., In re Adelphia Communications Corp.*, 359 B.R. 65, 72 n. 13 (Bankr.S.D.N.Y.2007) ("This Court has been on record for many years as having held that the interests of predictability in this District are of great importance, and that where there is no controlling Second Circuit authority, it follows the decisions of other bankruptcy judges in this district in the absence of clear error.").

Here this Court has the benefit of the decisions of Bankruptcy Judge Gonzalez in the *Chrysler* chapter 11 cases [FN20]-affirmed by the Second Circuit, for substantially the reasons Judge Gonzalez set forth in his opinion-on facts

extraordinarily similar to those here.[FN21] Even more importantly, this Court also has the benefit of the Second Circuit's decisions in *Lionel*,[FN22] *LTV*,[FN23] *Financial News Network*,[FN24] *Gucci*,[FN25] and ***488***Iridium*,[FN26] which confirm that section 363 sales of major assets may be effected before confirmation, and lay out the circumstances under which that is appropriate. And this Court also can draw upon the Supreme Court's decision in *Piccadilly Cafeterias*,[FN27] which, while principally addressing other issues, recognized the common practice in chapter 11 cases of selling the bulk of a debtor's assets in a section 363 sale, to be followed by confirmation of a liquidating plan.

FN20. *See In re Chrysler LLC*, 405 B.R. 84 (Bankr.S.D.N.Y.2009) (" *Chrysler* "), and 405 B.R. 79 (Bankr.S.D.N.Y.2009) (" *Chrysler-Standing* ") (Gonzalez, J.), *aff'd for substantially the reasons stated in the opinions below*, No. 09-2311-bk (2d Cir. Jun. 5, 2009) ("*Chrysler-Circuit* "), *temporary stay vacated and further stay denied*, --- U.S. ----, 129 S.Ct. 2275, 173 L.Ed.2d 1285 (2009).

FN21. Though the similarities between this case and *Chrysler* are many, there is a noteworthy difference, as that case had one issue not before the Court here. In *Chrysler*, Judge Gonzalez had to analyze rights of participants in a secured lending facility who quarreled with their administrative agent's decision to consent to a sale free and clear of secured creditor claims and interests. *See Chrysler*, 405 B.R. at 100-104. Here there was no objection by secured creditors, other than a single limited objection by a secured creditor with a lien on property to be transferred, looking for adequate protection as part of the sale. Here the objecting bondholders are holders of *unsecured* debt, and thus lack the greater rights that secured creditors have in bankruptcy cases. Of course, the *Chrysler* case never really concerned, as some asserted, an assault on secured creditors' rights; it merely involved dissident minority participants in a secured lending facility being bound by the actions of their agent, pursuant to contractual agreements with the agent that they or their predecessors had agreed to.

FN22. *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, (2d Cir.1983) (" *Lionel* ").

FN23. *Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141 (2d Cir.1992) (" *LTV* ").

FN24. *Consumer News & Bus. Channel P'ship v. Fin. News Network Inc. (In re Fin. News Network Inc.)*, 980 F.2d 165 (2d Cir.1992) (" *FNN* ").

FN25. *Licensing By Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380 (2d Cir.1997) (" *Gucci* ").

FN26. *Motorola v. Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452 (2d Cir.2007) (" *Iridium* ").

FN27. *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554U.S. 33, 128 S.Ct. 2326, 2331 n. 2, 171 L.Ed.2d 203 (2008) (" *Piccadilly Cafeterias* ").

In *Chrysler*, Judge Gonzalez discussed at great length the evolution of the law in this area and its present requirements,[FN28] and this Court need not do so in comparable length. Judge Gonzalez, and the Second Circuit affirming him, dealt with the exact issue presented here: whether under Bankruptcy Code section 363, the bulk of the assets of an estate can be sold before confirmation. As Judge Gonzalez noted, *Lionel*-upon whose standards all of the cases considering pre-confirmation section 363 sales have been based-speaks directly to whether assets of a bankruptcy estate can be sold "out of the ordinary course of business and prior to acceptance and outside of any plan of reorganization." [FN29]

FN28. *See Chrysler*, 405 B.R. at 94-96.

FN29. *Id.* at 94.

The *Lionel* court expressly recognized that section 363(b) "seems on its face to confer upon the bankruptcy judge virtually unfettered discretion" to authorize sales out of the ordinary course.[FN30] And the *Lionel* court further declared that "a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the Code," [FN31] and that:

FN30. 722 F.2d at 1069.

FN31. *Id.*

> To further the purposes of Chapter 11 reorganization, a bankruptcy judge must have substantial freedom to tailor his orders to meet differing circumstances. This is exactly the result a liberal reading of § 363(b) will achieve. FN32

FN32. *Id.*

Nevertheless, the Circuit considered it inappropriate to authorize use of section 363(b) to the full extent that section 363(b)'s plain language-with its absence of any express limitations-would suggest. Instead, the Circuit established a standard that was in substance one of common law, but grounded in the overall structure of the Bankruptcy Code. The Second Circuit "reject[ed] the requirement that only an emergency permits the use of § 363(b)." FN33 But it also "reject[ed] the view that § 363 grants the bankruptcy judge carte blanche." FN34 Concerned that such a construction would "swallow[ ] up Chapter 11's safeguards," FN35 the *Lionel* court established the more nuanced balancing test that the lower courts in this Circuit have applied for more than 25 years. The Circuit declared:

FN33. *Id.*

FN34. *Id.*

FN35. *Id.*

> The history surrounding the enactment in 1978 of current Chapter 11 and the logic underlying it buttress our conclusion that *there must be some articulated business justification*, other than appeasement***489** of major creditors, for using, selling or leasing property out of the ordinary course of business before the bankruptcy judge may order such disposition under section 363(b). FN36

FN36. *Id.* at 1070 (emphasis added).

It went on to say that:

> Resolving the apparent conflict between Chapter 11 and § 363(b) does not require an all or nothing approach. Every sale under § 363(b) does not automatically short-circuit or side-step Chapter 11; nor are these two statutory provisions to be read as mutually exclusive. Instead, if a bankruptcy judge is to administer a business reorganization successfully under the Code, then ... some play for the operation of both § 363(b) and Chapter 11 must be allowed for. FN37

FN37. *Id.* at 1071,

And it went on to set forth the rule for which *Lionel* is remembered:

> The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing *a good business reason* to grant such an application. FN38

FN38. *Id.* (emphasis added).

[3] With no less than five decisions from the Circuit holding similarly FN39-not counting the Circuit's recent affirmance of *Chrysler*-it is plain that in the Second Circuit, as elsewhere,FN40 even the entirety of a debtor's business may be sold without waiting for confirmation when there is a good business reason for doing so. Likewise, in *Piccadilly Cafeterias,* the Supreme Court, while principally addressing a different issue,FN41 recognized the use of ***490** section 363 sales under which all or substantially all of a debtor's assets are sold. The Supreme Court stated:

FN39. *See Lionel; LTV,* 973 F.2d at 143-44 ("In *Lionel,* we adopted a rule that 'requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application,' " and, quoting *Lionel,* reiterating that "First and foremost is the notion that a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the Code," and that "a bankruptcy judge must have substantial freedom to tailor his orders to meet differing circumstances."); *FNN,* 980 F.2d at 169 (in considering sale outside of a plan of reorganization, "a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the [Bankruptcy] Code"); *Gucci,* 126 F.3d at 387 ("A sale of a substantial part of a Chapter 11 estate ... may be conducted if a good business reason exists to support it."); *Iridium,* 478 F.3d at 466 ("In this Circuit, the sale of an asset of the estate under § 363(b) is permissible if the judge determining

> [the] § 363(b) application expressly find[s] from the evidence presented before [him or her] at the hearing [that there is] a good business reason to grant such an application.").
>
> FN40. *See, e.g., In re Decora Indus.*, No. 00-4459, 2002 WL 32332749, at *3 (D.Del. May 20, 2002) (Farnan, J.) (approving a 363 sale, finding a "sound business purpose" where "the Court understands the precarious financial and business position of Debtors"; their only source of outside financing was a DIP facility that would soon expire, with no source of alternative financing, and where the alternatives were either the proposed sale transaction or termination of business operations and liquidation).
>
> *See also* 3 COLLIER ON BANKRUPTCY ¶ 363.02[3] (15th ed. rev.2009) ("***Collier*** ") (While sales of substantial portions of a debtor's assets under section 363 must be scrutinized closely by the court, "[i]t is now generally accepted that section 363 allows such sales in chapter 11, as long as the sale proponent demonstrates a good, sound business justification for conducting the sale before confirmation (other than appeasement of the loudest creditor), that there has been adequate and reasonable notice of the sale, that the sale has been proposed in good faith, and that the purchase price is fair and reasonable.").
>
> FN41. There the issue involved the debtor's entitlement to the "stamp-tax" exemption of Bankruptcy Code section 1146, after a 363 sale of the entirety of the debtor's assets and confirmation of a plan distributing the proceeds of the earlier 363 sale.

Chapter 11 bankruptcy proceedings ordinarily culminate in the confirmation of a reorganization plan. *But in some cases, as here, a debtor sells all or substantially all its assets under § 363(b)(1) before seeking or receiving plan confirmation.* In this scenario, the debtor typically submits for confirmation a plan of liquidation (rather than a traditional plan of reorganization) providing for the distribution of the proceeds resulting from the sale.[FN42]

> FN42. 128 S.Ct. at 2331 n. 2 (emphasis added).

[4][5][6] In making the determination as to whether there is a good business reason to effect a 363 sale before confirmation, the *Lionel* court directed that a court should consider all of the "salient factors pertaining to the proceeding" and "act to further the diverse interests of the debtor, creditors and equity holders." [FN43] It then set forth a nonexclusive list to guide a court in its consideration of the issue:

> FN43. 722 F.2d at 1071.

(a) the proportionate value of the asset to the estate as a whole;

(b) the amount of elapsed time since the filing;

(c) the likelihood that a plan of reorganization will be proposed and confirmed in the near future;

(d) the effect of the proposed disposition on future plans of reorganization;

(e) the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property;

(f) which of the alternatives of use, sale or lease the proposal envisions; and "most importantly perhaps," [FN44]

> FN44. *Id.*

(g) whether the asset is increasing or decreasing in value.[FN45]

> FN45. *Id.* at 1071.

Importantly, the *Lionel* court also declared that a bankruptcy court must consider if those opposing the sale produced some evidence that the sale was not justified.[FN46]

> FN46. *Id.*

As the *Lionel* court expressly stated that the list of salient factors was not exclusive,[FN47] this Court might suggest a few more factors that might be considered, along with the preceding factors, in appropriate cases:

> FN47. *Id.* ("This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge."); *accord Iridium*, 478 F.3d at

466 n. 21.

(h) Does the estate have the liquidity to survive until confirmation of a plan?

(i) Will the sale opportunity still exist as of the time of plan confirmation?

(j) If not, how likely is it that there will be a satisfactory alternative sale opportunity, or a stand-alone plan alternative that is equally desirable (or better) for creditors? And

(k) Is there a material risk that by deferring the sale, the patient will die on the operating table?

Each of the factors that the *Lionel* court listed, and the additional ones that this Court suggests, go to the ultimate questions that the *Lionel* court identified: Is there an "articulated business justification" and a "good business reason" for proceeding with the sale without awaiting the final confirmation of a plan.

***491** [7][8][9] As discussed in Section 1(c) below, a debtor cannot enter into a transaction that "would amount to a *sub rosa* plan of reorganization" or an attempt to circumvent the chapter 11 requirements for confirmation of a plan of reorganization.[FN48] If, however, the transaction has "a proper business justification" which has the potential to lead toward confirmation of a plan and is not to evade the plan confirmation process, the transaction may be authorized.[FN49] Thus as observed in *Chrysler:*

FN48. *See Chrysler*, 405 B.R. at 95-96.

FN49. *Id.* at 96.

A debtor may sell substantially all of its assets as a going concern and later submit a plan of liquidation providing for the distribution of the proceeds of the sale. This strategy is employed, for example, when there is a need to preserve the going concern value because revenues are not sufficient to support the continued operation of the business and there are no viable sources for financing.[FN50]

FN50. *Id.* (citations omitted).

As further observed in *Chrysler*, several sales seeking to preserve going concern value have recently been approved in this district, and going back further, many more have been, as debtors not infrequently could not survive until a plan could be confirmed. In addition to *BearingPoint*, which Judge Gonzalez expressly noted, many other 363 sales have been approved in chapter 11 cases on this Court's watch, after appropriate consideration of *Lionel* and its progeny. In *Our Lady of Mercy Hospital*,[FN51] for example, the hospital was sold as a going concern before it ran out of money, saving about 2,300 jobs and a critical supplier of medical services in the Bronx.

FN51. No. 07-10609(REG), ECF # 284.

In *Adelphia*,[FN52] a sale under a *plan* was originally proposed by the debtors, but a section 363 sale had to be effected instead, when intercreditor disputes made it impossible to confirm a plan in time to save the sale opportunity, and more than $17 billion in sale proceeds nearly was lost.[FN53] Anyone with a knowledge of chapter 11 cases in this District can well understand why none of Harry Wilson's advisors thought that GM could survive a normal plan confirmation process.

FN52. No. 02-41729(REG).

FN53. *See In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 169 (Bankr.S.D.N.Y.2007) (" Adelphia-Confirmation") (describing the history).

[10] After *Lionel*, *LTV*, *FNN*, *Gucci*, *Iridium* and, of course, *Chrysler*, it is now well established that a chapter 11 debtor may sell all or substantially all its assets pursuant to section 363(b) prior to confirmation of a chapter 11 plan, when the court finds a good business reason for doing so. And here the Court has made exactly such a finding. In fact, it is hard to imagine circumstances that could more strongly justify an immediate 363 sale. As the Court's Findings of Fact set forth at length, GM, with no liquidity of its own and the need to quickly address consumer and fleet owner doubt, does not have the luxury of selling its business under a plan.

And if that is not by itself enough, the U.S. Treasury's willingness to fund GM is contingent upon the approval of the 363 Transaction by July 10. The Court fully understands the unwillingness of the Government to keep funding GM indefinitely-especially to await the resolution of disputes amongst creditors trying to maximize their recoveries. If the 363 Transaction is disapproved, GM will lose its funding***492** and its liquidity on July 10, and its only alternative will be liquidation.[FN54]

> FN54. Thus the Court needn't spend extensive time in individualized discussion of each of the more specific factors articulated in *Lionel,* and by this Court, as aids in determining "good business reason." Where the proportionate value of the assets being sold is high, as they are here, Factor (a) (proportionate value of the assets to the estate as a whole) suggests that the situation be given close factual scrutiny-which the Court has attempted to do, in its rather lengthy Findings of Fact above-but at most Factor (a) tips only mildly against approval here. The same is true with respect to Factor (b) (elapsed time since the filing)-since where the need is most pressing, it would be foolhardy to wait. Factors (d) (effect on reorganization), (e) (proceeds to be realized), and (f) (which alternative is proposed) are inapplicable or favor immediate sale, as the Court finds that a standalone plan of reorganization is not possible, that the sale would not change distribution priorities in any ultimate plan, and there are no opportunities to realize greater value. And all of the other factors weigh *heavily* in favor of approval. Factor (g) (whether the asset is increasing or decreasing in value), expressly stated by the Circuit to be most important, *compels* and not just favors immediate sale. So do Factors (h) (lack of liquidity); (i) (no alternative sale opportunity later); (j) (same, along with no stand-alone plan alternative); and (k) the certainty or near certainty that in the absence of this sale, the patient will indeed die on the operating table. (If it matters, the same conclusion follows even if one does not consider the additional factors this Court suggested.)
>
> The Court also notes the critically important absence of proof tending to support a contrary finding, as also required by *Lionel. See Lionel,* 722 F.2d at 1071. Opponents of the sale have produced no evidence that the sale is *not* justified.

In its summation, the F & D Bondholders Committee stated that it was not inclined to second guess *GM's* view that it had to proceed with a 363 sale, given GM's lack of alternatives, but that the *Court* should step in to tell everyone that a 363 sale was unacceptable. The premise underlying this contention was that the U.S. Government's July 10 deadline was just posturing, and that the Court should assume that the U.S. Government cares so much about GM's survival that the U.S. Government would never let GM die.

The Court declines to accept that premise and take that gamble. The problem is not that the U.S. Treasury would walk away from GM if this Court took an extra day or so to reach its decision. The problem is that if the 363 Transaction got off track, especially by the disapproval the F & D Bondholders Committee seeks, the U.S. Government would see that there was no means of early exit for GM; that customer confidence would plummet; and that the U.S. Treasury would have to keep funding GM while bondholders (and, then, perhaps others) jousted to maximize their individual incremental recoveries. The Court fully takes Harry Wilson at his word.

In another matter in the *Adelphia* cases, this Court was faced with quite similar circumstances. The Government had the ability to effect a forfeiture of Adelphia assets, and even to indict Adelphia (as a corporation, in addition to the Rigases), which would destroy most, if not all, of Adelphia's value. The Government had indicted Arthur Andersen, with those exact consequences, but many Adelphia creditors argued that the Government would never do it again. And they objected to an Adelphia settlement that paid $715 million to the Government, to forestall all of those potential consequences, among others. This Court approved the settlement, and its determination was affirmed on appeal. This Court stated:

> Would the DoJ have indicted Adelphia, with the threat to the recoveries for innocent stakeholders that such an indictment would have entailed? One would think not, but the DoJ had done ***493** exactly that to Arthur Andersen, with those exact consequences. It was at least prudent for Adelphia's Board to protect the entity under its stewardship from its destruction, and to avoid taking such a gamble.[FN55]
>
> FN55. *In re Adelphia Commc'ns Corp.*, 327 B.R. 143, 166 (Bankr.S.D.N.Y.2005) (" *Adelphia Settlement-Bankruptcy* "), *aff'd* 337 B.R. 475 (S.D.N.Y.2006) (Kaplan, J.)(" *Adelphia Settlement-District* "), *appeal dismissed,* 222 Fed.Appx. 7 (2d Cir.2006), *cert. denied,* 552 U.S. 941, 128 S.Ct. 114, 169 L.Ed.2d 244 (2007).

This Court further stated that "[o]nce more, the Adelphia Board cannot be faulted for declining to bet the company on what would be little more than a guess as to the decision

the DoJ would make." [FN56]

FN56. *Adelphia Settlement-Bankruptcy*, 327 B.R. at 167.

GM's counsel noted in summation that the F & D Bondholders Committee was expecting this Court to play Russian Roulette, and the comparison was apt. So that the F & D Bondholders Committee could throw GM into a plan negotiation process, the Court would have to gamble on the notion that the U.S. Government didn't mean it when it said that it would not keep funding GM. There is no reason why any fiduciary, or any court, would take that gamble. This is hardly the first time that this Court has seen creditors risk doomsday consequences to increase their incremental recoveries, and this Court-which is focused on preserving and maximizing value, allowing suppliers to survive, and helping employees keep their jobs-is not of a mind to jeopardize all of those goals.

Thus there is more than "good business reason" for the 363 Transaction here. The Creditors' Committee in this case put it better than this Court could:

> The simple fact is that there are no other viable bids-indeed no serious expressions of interest-to purchase GM's assets and no other feasible way for GM to restructure its business to remain viable. The current transaction is the only option on the table. The Court is thus faced with a clear choice: to approve the proposed sale transaction, preserve the going-concern value of the Debtors' businesses, and maximize substantial value for stakeholders (despite the pain that this course will inflict on numerous innocent parties), or reject the transaction and precipitate the dismantling and liquidation of GM to the detriment of all involved. *Preventing this harm serves the core purposes of the Bankruptcy Code and constitutes a strong business justification under Section 363 of the Code to sell the debtors' assets outside of a plan process.*[FN57]

FN57. Creditors' Comm. Ltd. Obj. ¶ 3 (emphasis added).

While because of the size of this case and the interests at stake, GM's chapter 11 case can hardly be regarded as routine, GM's proposed section 363 sale breaks no new ground. This is exactly the type of situation where under the Second Circuit's many holdings, there is good business reason for an immediate sale. GM does not have the luxury to wait for the ultimate confirmation of a plan, and the only alternative to an immediate sale is liquidation.

(b) Compliance with Standards for Approval of Section 363 Sales

[11][12] With the Court having concluded that the requisite sound business justification exists for a proposed sale of the type proposed here, the inquiry turns to whether the routine requirements for any section 363 sale, and appropriate exercise of the business judgment rule, have been satisfied. The court must be satisfied that (i) notice has been given to all ***494** creditors and interested parties; (ii) the sale contemplates a fair and reasonable price; and (iii) the purchaser is proceeding in good faith. [FN58]

FN58. *See, e.g.*, *In re Betty Owens Sch., Inc.*, 1997 WL 188127, at *4 (S.D.N.Y. Apr.17, 1997) (Leisure, J.), citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D.Del.1991) (Longobardi, J.). *See also* Judge Farnan's more recent decision in *Decora Industries*, 2002 WL 32332749, at *2.

[13] These factors are all satisfied here. Notice was extensively given, and it complied with all applicable rules. As to the sufficiency of the purchase price, the Court is equally satisfied. No other, much less better, offer was received, and the GM Board even secured a fairness opinion from reputable advisors, expressing the opinion that the consideration was, indeed, fair.

[14] Finally, the Court has found that the Purchaser has acted in good faith, and as mixed questions of fact and law, the Court now determines (i) that this legal requirement for a sale has been satisfied, and (ii) that the Purchaser is entitled to a good faith purchaser finding-matters that are relevant to the determination under *Betty Owens Schools* and the other cases articulating like requirements, and also to the section 363(m) finding that the U.S. Government understandably desires. In ruling that the U.S. Government has indeed acted in good faith, for both of the purposes for which that ruling is relevant, the Court sees no basis for finding material differences in the standard.

[15][16] While the Bankruptcy Code does not define the "good faith" that protects transactions pursuant to section 363(m) (or, for that matter, the "good faith" that courts require in approving section 363 sales in the first place), the Second Circuit has explained that:

> Good faith of a purchaser is shown by the integrity of his

> conduct during the course of the sale proceedings; where there is a lack of such integrity, a good faith finding may not be made. A purchaser's good faith is lost by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.' FN59

> FN59. *Gucci*, 126 F.3d at 390 (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir.1978)); *accord id.* (noting also that the relevant fraudulent, collusive actions are those "specifically intended to affect the sale price or control the outcome of the sale."); *Chrysler*, 405 B.R. at 106 (same).

Here there is no proof that the Purchaser (or its U.S. and Canadian governmental assignors) showed a lack of integrity in any way. To the contrary, the evidence establishes that the 363 Transaction was the product of intense arms'-length negotiations. And there is no evidence of any efforts to take advantage of other bidders, or get a leg up over them. In fact, the sad fact is that there *were no* other bidders.

Thus, the Court finds that the Purchaser is a good faith purchaser, for sale approval purposes, and also for the purpose of the protections section 363(m) provides.

[17][18] The Court additionally determines that it finds GM to be in compliance with the requirements of the business judgment rule, commonly used in consideration of 363 sales in this District and elsewhere.FN60 As noted in this Court's decision in *Global Crossing*, and Judge Mukasey's decision in *Integrated Resources*, that rule ***495** entails "(1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets." FN61

> FN60. *See In re Global Crossing Ltd.*, 295 B.R. 726, 742-44 (Bankr.S.D.N.Y.2003), relying heavily on *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650 (S.D.N.Y.1992) (Mukasey, C.J.).

> FN61. *Global Crossing*, 295 B.R., at 743.

Here the Court finds it unnecessary to state, one more time, all of the facts that support a finding that such requirements have been satisfied. The GM Board's decision would withstand *ab initio* review, far more than the business judgment test requires.FN62

> FN62. When the Court considers "disinterestedness," it looks to the disinterestedness of GM's Board and management, and particularly its Board, which is the ultimate decision maker for any corporation. The Court heard no evidence that either the Board or management chose the sale opportunity over any other alternative either because of a conflict of interest, or because the Government told them to. The Court finds instead that GM's Board and management took the pending opportunity to save the company because it was the only responsible alternative available.
>
> Finally, the U.S. and Canadian governments did not become "insiders" skewing any disinterestedness analysis by reason of their assistance to GM. *See Chrysler*, 405 B.R. at 107 ("Nor did the Governmental Entities control the Debtors in that regard [with respect to the *Chrysler* sale transaction] or become 'insiders' of the Debtors.").

(c) "Sub Rosa" Plan

[19] The F & D Bondholders, Parker and other objectors also contend that by proposing the 363 Transaction, GM has proposed the implementation of a forbidden "*sub rosa* " plan. The Court disagrees.

[20][21][22] While neither section 363 nor any other provision of the Code defines or otherwise mentions "*sub rosa* " plans, or provides that they are impermissible, caselaw (including caselaw in this Circuit and District) recognizes the impropriety of *sub rosa* plans in instances in which they genuinely exist.FN63 The idea underlying the prohibition against *sub rosa* plans appears in *Braniff*, the case from which the prohibition emerged. It is that "the debtor and the Bankruptcy Court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets." FN64 A proposed 363 sale may be objectionable, for example, when aspects of the transaction dictate the terms of the ensuing plan or constrain parties in exercising their confirmation rights,FN65 such as by placing restrictions on creditors' rights to vote on a plan.FN66 A 363 sale may also may be objectionable as a *sub rosa* plan if the sale itself seeks to

allocate or dictate the distribution of sale proceeds among different classes of creditors.[FN67]

FN63. *See* *Iridium*, 478 F.3d at 466 (citing *Pension Benefit Guar. Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc.)*, 700 F.2d 935, 940 (5th Cir.1983); *Chrysler*, 405 B.R. at 95-96).

FN64. 700 F.2d at 940.

FN65. *See* *Abel v. Shugrue (In re Ionosphere Clubs, Inc.)*, 184 B.R. 648, 654 & n. 6 (S.D.N.Y.1995).

FN66. *See* *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 354 (5th Cir.1997).

FN67. *See* *Contrarian Funds, LLC v. Westpoint Stevens Inc. (In re Westpoint Stevens Inc.)*, 333 B.R. 30, 51 (S.D.N.Y.2005) (Swain, J.).

But none of those factors is present here. The MPA does not dictate the terms of a plan of reorganization, as it does not attempt to dictate or restructure the rights of the creditors of this estate. It merely brings in value. Creditors will ***496** thereafter share in that value pursuant to a chapter 11 plan subject to confirmation by the Court. A transaction contemplating that does not amount to a *sub rosa* plan.[FN68]

FN68. *See* *In re Naron & Wagner, Chartered*, 88 B.R. 85, 88 (Bankr.D.Md.1988) (the "sale proposed here is not a *sub rosa* plan because it seeks only to liquidate assets, and the sale will not restructure [the] rights of creditors.").

[23] In the *TWA* chapter 11 case,[FN69] substantially all of the airline's assets were sold to American Airlines, in a 363 sale. There too the contention was made that the 363 sale was a *sub rosa* plan. Judge Walsh rejected the contention. He explained:

FN69. *See* *In re Trans World Airlines, Inc.*, 2001 WL 1820326, at *11 (Bankr.D.Del. Apr.2, 2001) (Walsh, J.).

> It is true, of course, that TWA is converting a group of volatile assets into cash. It may also be true that the value generated is not enough for a dividend to certain groups of unsecured creditors. *It does not follow, however, that the sale itself dictates the terms of TWA's future chapter 11 plan.* The value generated through the Court approved auction process reflects the market value of TWA's assets and the conversion of the assets into cash is the contemplated result under § 363(b).[FN70]
>
> FN70. 2001 WL 1820326, at *12 (emphasis added).

Here the objectors principally base their arguments on things the *Purchaser* intends to do. They complain of the Purchaser's intention, in connection with the 363 Transaction, to

> (i) be assigned substantially all executory contracts with direct suppliers,
>
> (ii) make offers of employment to all of the Debtors' nonunionized employees and employees represented by the UAW, and
>
> (iii) be assigned a modified collective bargaining agreement with the UAW, including an agreement to contribute to the New VEBA to fund retiree medical benefits for UAW members and their surviving spouses.

But these do not give rise to a *sub rosa* plan when the first is merely an example of an element of almost *every* 363 sale (where purchasers designate the contracts to be assumed and assigned), and the second and third are actions by the *Purchaser*.

The Court senses a disappointment on the part of dissenting bondholders that the Purchaser did not choose to deliver consideration to them in any manner other than by the Purchaser's delivery of consideration to GM as a whole, pursuant to which bondholders would share like other unsecured creditors-while many supplier creditors would have their agreements assumed and assigned, and new GM would enter into new agreements with the UAW and the majority of the dealers. But that does not rise to the level of establishing a *sub rosa* plan. The objectors' real problem is with the decisions of the Purchaser, not with the Debtor, nor with any violation of the Code or caselaw.

[24] Caselaw also makes clear that a section 363(b) sale transaction is not objectionable as a *sub rosa* plan based on the fact that the purchaser is to assume *some*, but not all, of the debtor's liabilities, or because some contract counter-

parties' contracts would not be assumed. As Judge Walsh observed in *TWA:*

> [N]othing in § 363 suggests that disparate treatment of creditors, such as is likely to occur here, disqualifies a transaction from court approval. The purpose of a § 363(b) sale is to transform ***497** assets ... into cash in an effort to maximize value. *Distribution of the value generated in accordance with § 1129 and other priority provisions occurs and is intended to occur subsequent to the sale.*

He further stated:

> The treatment of creditors in a § 363(b) context is dictated by the fair market value of those assets of the debtor that the purchaser in its business judgment elects to purchase. A purchaser cannot be told to assume liabilities that do not benefit its purchase objective. *Thus, the disparate treatment of creditors occurs as a consequence of the sale transaction itself and is not an attempt by the debtor to circumvent the distribution scheme of the Code.* [FN71]
>
> FN71. 2001 WL 1820326, at *11 (emphasis added).

Last, but hardly least, the *sub rosa* plan contention was squarely raised, and rejected, in *Chrysler,*[FN72] which is directly on point and conclusive here.

> FN72. *See* 405 B.R. at 97-100.

The *Chrysler* transaction was structured in a fashion very similar to that here, with a combination of sale proceeds to be provided to the seller, assignments of contracts with suppliers, taking on seller employees, and contribution to a VEBA. Judge Gonzalez rejected the contention that the transaction amounted to a *sub rosa* plan. He noted that:

> (i) there was no attempt to allocate sale proceeds away from the objectors (there, first lien lenders); [FN73]
>
> FN73. *Id.* at 98.
>
> (ii) the fact that counterparties whose executory contracts were being assumed and assigned under section 365, at the election of the purchaser, gave counterparties a *Code-authorized* "more favorable treatment," which neither violated the priority rules nor transformed the sale into a *sub rosa* plan; [FN74]
>
> FN74. *Id.* at 99.
>
> (iii) the purchaser's ability to choose which contracts it considered valuable did not change that result; [FN75]
>
> FN75. *Id.*
>
> (iv) in negotiating with groups essential to its viability (such as its workforce) the purchaser was free to provide ownership interests in the new entity as it saw fit; [FN76] and that
>
> FN76. *Id.*
>
> (v) the purchaser's allocation of value in its own enterprise did not elevate its measures into a *sub rosa* plan.[FN77]
>
> FN77. *Id.* at 99-100.

In connection with the last two points, Judge Gonzalez made a critically important point-that the allocation of value by the purchaser did not affect the *debtor's* interest. In that connection, Judge Gonzalez observed:

> In negotiating with those groups essential to its viability, New Chrysler made certain agreements and provided ownership interests in the new entity, which was neither a diversion of value from the Debtors' assets nor an allocation of the proceeds from the sale of the Debtors' assets. *The allocation of ownership interests in the new enterprise is irrelevant to the estates' economic interests.*[FN78]
>
> FN78. *Id.* at 99 (emphasis added).

Similarly, Judge Gonzalez noted that what the UAW, the VEBA and the U.S. Treasury would be getting in New Chrysler was not on account of any entitlements any of them might have in the case before him. He observed:

> ***498** In addition, the UAW, VEBA, and the Treasury are not receiving distributions on account of their prepetition claims. Rather, consideration to these entities is being provided under separately-negotiated agreements with New Chrysler.[FN79]

FN79. *Id.* As he further observed, the UAW in *Chrysler* was providing substantial consideration to New Chrysler in the form of "unprecedented modifications" to the UAW's collective bargaining agreement. *Id.* at 100. The record supports a similar finding here.

As in *Chrysler* and *TWA,* the Court rules that the 363 Transaction does not constitute an impermissible *sub rosa* plan.

(d) Recharacterization or Subordination of U.S. Treasury Debt

The F & D Bondholders and Bondholder Parker contend that some or all of the U.S. Government's secured debt should be recharacterized as equity-or, alternatively, equitably subordinated to unsecured debt-as a predicate for their next contention that it cannot be used as the basis for a credit bid. The Court disagrees with each contention.

In another of its decisions in the *Adelphia* chapter 11 cases,[FN80] this Court likewise considered allegations that a secured lender's debt should be recharacterized as equity. In doing so, the Court applied standards articulated by the Fourth Circuit and Sixth Circuit in the *Dornier Aviation* [FN81] and *AutoStyle Plastics*[FN82] cases, which in turn had been based on tax law precedent.

FN80. *See Adelphia Commc'ns Corp. v. Bank of America (In re Adelphia Commc'ns Corp.),* 365 B.R. 24, 73-75 (Bankr.S.D.N.Y.2007) (" *Adelphia-Bank of America* "), *aff'd as to all but an unrelated issue,* 390 B.R. 80 (S.D.N.Y.2008) (McKenna, J.).

FN81. *In re Official Comm. of Unsecured Creditors for Dornier Aviation (North America), Inc.,* 453 F.3d 225, 233-34 (4th Cir.2006).

FN82. *In re AutoStyle Plastics, Inc.,* 269 F.3d 726, 749-50 (6th Cir.2001).

[25] Factors listed in those cases are:

(1) the names given to the instruments, if any, evidencing the indebtedness;

(2) the presence or absence of a fixed maturity date and schedule of payments;

(3) the presence or absence of a fixed rate of interest and interest payments;

(4) the source of repayments;

(5) the adequacy or inadequacy of capitalization;

(6) the identity of interest between the creditor and the stockholder;

(7) the security, if any, for the advances;

(8) the corporation's ability to obtain financing from outside lending institutions;

(9) the extent to which the advances were subordinated to the claims of outside creditors;

(10) the extent to which the advances were used to acquire capital assets; and

(11) the presence or absence of a sinking fund to provide repayments. [FN83]

FN83. *See Adelphia-Bank of America,* 365 B.R. at 74 (*citing, inter alia, Dornier Aviation* and *AutoStyle*).

[26] Here the Court finds that GM was inadequately capitalized at the time the loans were made; that GM could not obtain financing from outside lending institutions, and that the record does not show the presence of a sinking fund to provide repayments-three of the eleven factors that would suggest recharacterization. But of the remainder, every single factor supports finding that this was genuine debt. Among other factors, as noted in the Court's Findings of Fact above, this ***499** transaction was fully documented as a loan; was secured debt, complete with intercreditor agreements to address priority issues with other secured lenders; had interest terms (albeit at better than market rate) and maturity terms, and, significantly, had *separate* equity features-providing for warrants to accompany the debt instruments. The Court has previously found, as a fact and mixed question of fact and law, that the Prepetition Secured Debt was, in fact, debt, and the Court now determines that as a conclusion of law.[FN84]

FN84. There is no basis for recharacterizing the

> $33 billion that was the subject of the DIP loans provided by the U.S. Treasury and EDC. These were presented to the Court as loans, seeking approval for post-petition financing under section 364 of the Code.

[27][28] Likewise, the Court disagrees with contentions (principally by bondholder Parker) that the secured debt held by the U.S. Treasury (and, presumably, EDC) should be equitably subordinated. The Court addressed the development of the law of equitable subordination (and its first cousin, equitable disallowance) in its decision in *Adelphia-Bank of America,* and need not discuss it in comparable length here. It is sufficient for the purposes of this decision to say that as originally stated in the famous case of *Mobile Steel,*[FN85] a party seeking to establish equitable subordination must prove that (i) the holder of the claim being subordinated engaged in inequitable conduct; (ii) the inequitable conduct resulted in injury to creditors or conferred an unfair advantage on the claimant; and (iii) equitable subordination is not inconsistent with the provisions of the Bankruptcy Code.[FN86] None of those factors has been established here.

> FN85. *Benjamin v. Diamond (In re Mobile Steel Co.),* 563 F.2d 692 (5th Cir.1977).

> FN86. *Id.* at 700.

First the Court finds that none of the U.S. Treasury, the Government of Canada, the Government of Ontario, or EDC acted inequitably in any way. They advanced funds to help thousands of creditors, citizens, employees of GM, and employees of suppliers and others. Their efforts to ensure that they were not throwing their money away in a useless exercise, and were expecting GM to slim down so it could survive without governmental assistance, are hardly inequitable; they were common sense.

Similarly, the Court finds no harm to creditors; without the challenged efforts, GM would have had to liquidate. Nor was there any special benefit to any of the Government entities.

Finally, treating the governmental lenders as lenders is hardly inconsistent with the provisions of the Bankruptcy Code. There is, in short, no basis for equitable subordination here.

(e) Asserted Inability to Credit Bid

In light of the conclusions reached in the preceding section, the U.S. Treasury and EDC may, if they choose, assign their secured debt to the Purchaser, and there is then no reason why the Purchaser may not credit bid.

2. Successor Liability Issues

Many objectors-including the Ad Hoc Committee of Consumer Victims (the "**Consumer Victims Committee**"), individual accident litigants ("the **Individual Accident Litigants**"), and attorneys for asbestos victim litigants (collectively, "the **Asbestos Litigants**") object to provisions in the proposed sale order that would limit any "successor liability" that New GM might have. Successor liability claims normally are for money damages-as, for example,***500** the claims by the Individual Accident Litigants are. If permitted, such claims would be asserted against the successor in ownership of property that was transferred from the entity whose alleged wrongful acts gave rise to the claim.

[29][30] "As a general rule, a purchaser of assets does not assume the liabilities of the seller unless the purchaser expressly agrees to do so or an exception to the rule exists." [FN87] Successor liability is an equitable exception to that general rule.[FN88] Successor liability depends on state law, and the doctrines vary from state to state,[FN89] but generally successor liability will not attach unless particular requirements imposed by that state have been satisfied.[FN90]

> FN87. 3 *Collier* at ¶ 363.06[7].

> FN88. *Id.*

> FN89. *Id.*

> FN90. *See id.*

If a buyer cannot obtain protection against successor liability, "it may pay less for the assets because of the risk." [FN91] When the transfer of property takes place in a 363 sale, and the buyer has sought and obtained agreement from the debtor that the sale will be free and clear, the bankruptcy court is invariably asked to provide, in its approval order, that the transferee does not assume liability for the debtor's pre-sale conduct.

> FN91. *Id.* Whether the U.S. and Canadian Governments would have lent and ultimately bid a

> lesser amount here is doubtful, but this consideration provides the context for deciding legal issues that presumably will extend beyond this case.

Such a request was likewise made here. Under the proposed order, in its latest form, New GM would voluntarily assume liability for warranty claims, and for product liability claims asserted by those injured after the 363 Transaction-even if the vehicle was manufactured before the 363 Transaction. But New GM would not assume any Old GM liabilities for injuries or illnesses that arose before the 363 Transaction. And the proposed order has a number of provisions making explicit findings that New GM is not subject to successor liability for such matters, and that claims against New GM of that character are enjoined.[FN92]

> FN92. The principal provisions in the proposed order provide, in relevant part:
>
> > 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 ... including rights or claims based on any successor or transferee liability....
> >
> > Proposed Order ¶ 7.
> >
> > ... [A]ll persons and entities ... holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims 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 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.
> >
> > Proposed Order ¶ 8. Similar provisions are in the MPA.

[31] The issues as to the successor liability provisions in the approval order are the most debatable of the issues now before***501** the Court. Textual analysis is ultimately inconclusive as to the extent to which a 363 order can bar successor liability claims premised upon the transfer of property, and cases on a nationwide basis are split. But principles of *stare decisis* dictate that under the caselaw in this Circuit and District, the Court should, and indeed must, rule that property can be sold free and clear of successor liability claims.

(a) Textual Analysis

As before, the Court starts with textual analysis. Section 363(f) provides, in relevant part:

> The trustee may sell property under subsection (b) ... of this section free and clear of any interest in such property of an entity other than the estate, only if-
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Application of section 363(f)'s authority to issue a "free and clear" order with respect to a successor liability claim turns, at least in the first instance, on whether such a claim is an "interest in property." But while "claim" is defined in the Code,[FN93] neither "interest" nor "interest in property" is likewise defined.

> FN93. *See* Section 101(5) of the Code.

So in the absence of statutory definitions of either "inter-

est" or "interest in property," what can we discern from the text of the Code as to what those words mean?

[32] First, we know that "interest" includes more than just a lien. Subsection (f)(3) makes clear that "interest" is broader, as there otherwise would be no reason for (f)(3) to deal with the subset of interests where "such interest is a lien." *Collier* observes that:

> Section 363(f) permits the bankruptcy court to authorize a sale free of "any interest" that an entity has in property of the estate. Yet the Code does not define the concept of "interest," of which the property may be sold free. Certainly a lien is a type of "interest" of which the property may be sold free and clear. This becomes apparent in reviewing section 363(f)(3), which provides for particular treatment when "such interest is a lien." *Obviously there must be situations in which the interest is something other than a lien;* otherwise, section 363(f)(3) would not need to deal explicitly with the case in which the interest is a lien.[FN94]

FN94. 3 *Collier* at ¶ 363.06[1] (emphasis added).

Second, we know that an "interest" is something that may accompany the transfer of the underlying property, and where bankruptcy policy, as implemented by the drafters of the Code, requires specific provisions to ensure that it *will not* follow the transfer.

The Individual Accident Litigants contend that here the Court should presume that "equivalent words have equivalent meaning when repeated in the same statute." [FN95] But while that is often a useful aid ***502** to construction, we cannot do so here. That is because "interest" has wholly different meanings as used in various places in the Code,[FN96] and assumptions that they mean the same thing here are unfounded.

FN95. Indiv. Accident Litigants Br. 4, *quoting Cohen v. de la Cruz*, 523 U.S. 213, 220, 118 S.Ct. 1212, 140 L.Ed.2d 341 (1998).

FN96. *See* Postings of Stephen Lubben, Professor at Seton Hall Law School, to Credit Slips, *http:// www. creditslips. org/ creditslips/ 2009/ 06/ claim- or- interest. html* (June 13, 2009, 8:25 PM EST); and *http:// www. creditslips. org/ creditslips/ 2009/ 06/ claim- or- interest- part- 2. html* (June 14, 2009, 6:42 PM EST). Blogs are a fairly recent phenomenon in the law, providing a useful forum for interchanges of ideas. While comments in blogs lack the editing and peer review characteristics of law journals, and probably should be considered judiciously, they may nevertheless be quite useful, especially as food for thought, and may be regarded as simply another kind of secondary authority, whose value simply turns on the rigor of the analysis in the underlying ideas they express.

Thus, those in the bankruptcy community know, upon considering the usage of "interest" in any particular place in the Code, that "interest" means wholly different things in different contexts:

> (i) a nondebtor's *collateral*-as used, for example, in consideration of adequate protection of an interest under sections 361 and 362(d)(1), use of cash collateral under section 363(c)(2), or in many 363(f) situations, such as where a creditor has a lien;
>
> (ii) *a legal or equitable ownership of property*-as used, for example, in section 541 of the Code, or in other section 363(f) situations, where a nondebtor asserts competing ownership, a right to specific performance, or the like-or, quite differently,
>
> (iii) *stock* or other equity in the debtor, *as contrasted to debt*-as used, for example, in section 1111 ("[a] proof of claim or interest is deemed filed under section 501"), or where a reorganization plan is to establish classes of claims and interests, under sections 1122 and 1123.

[33] The Individual Accident Litigants place particular emphasis on section 1141(c) of the Code, asking this Court to compare and contrast it. They argue that

> In contrast, § 1141(c) of the Bankruptcy Code provides that "property dealt with by the plan is free and clear of all *claims and interests ... in* the debtor." (Emphasis added). Section 363 and 1141(c) are two mechanisms for transfer of estate property (one through a sale, the other through a plan). The difference between the words chosen by Congress in these two closely related sections shows that Congress did not intend a sale under § 363(f) to be free and clear of "*claims*," but only of "*interests in* such property" because " 'it is generally presumed that Congress actions intentionally and purposely' when it 'includes particular language in one section of a statute but omits it in another.' " [FN97]

FN97. Indiv. Accident Litigants Br. 4.

But this is not an apt comparison, since when "interests" is used in section 1141(c), it is used with the wholly different definition of (iii) above-*i.e.*, as stock or another type of equity-in contrast to the very different definitions in (i) and (ii) above, which are ways by which "interests in property" may be used in section 363(f).

Thus, as Lubben suggests, and the Court agrees, in section 1141 "interest" matches up with "equity," and "claim" matches up with debt.[FN98] Section 1141 is of no assistance in determining whether litigation rights transmitted through transfers***503** of property fall within the meaning of "interests in property." Section 1141 does not provide a yardstick by which section 363(f)'s meaning can be judged.

FN98. *See* Posting of Stephen Lubben, Professor at Seton Hall Law School, to Credit Slips, *http:// www. creditslips. org/ creditslips/ 2009/ 06/ claim- or- interest. html* (June 13, 2009, 8:25 PM EST).

So where does textual analysis leave us? It tells us that "interest" means more than a lien, but it does not tell us how much more. Textual analysis does not support or foreclose the possibility that an "interest in property" covers a right that exists against a new party solely by reason of a transfer of property to that party. Nor does textual analysis support or foreclose the idea that an "interest" is a right that travels with the property-or that it would do so unless the Code cut it off. Ultimately textual analysis is inconclusive. Neither the Code nor interpretive aids tells us how broadly or narrowly-in the particular context of section 363(f)-"interest in property" should be deemed to be defined.[FN99]

FN99. The Individual Accident Litigants also place heavy reliance on *Butner v. United States*, 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979), *see* Indiv. Accident Litigants Br. 8, suggesting that *Butner* requires deference to state law that might impose successor liability and that this would require excluding successor liability damages claims from any definition of "interest." But the Court cannot agree. First, when quoted in full, *Butner* (whose bottom line was that the issue of whether a security interest extended to rents derived from the property was governed by state law) stated:

> The Bankruptcy Act does include provisions invalidating certain security interests as fraudulent, or as improper preferences over general creditors. Apart from these provisions, however, Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.
>
> 440 U.S. at 54, 99 S.Ct. 914. *Butner* further stated (in language the Individual Accident Litigants did not quote):
>
> Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.
>
> *Id.* at 55, 99 S.Ct. 914. But the *Butner* court laid out principles by which we determine what is property of the estate; it did not address the different issue of whether a state may impose liability on a transferee of estate property by reason of something the debtor did before the transfer. Moreover, *Butner* noted that provisions of the Code can and do sometimes trump state law. And section 363(f), for as much or as little as it covers, is exactly such a provision. In fact, 363(f) is a classic example of an instance where a "federal interest requires a different result." *Butner* neither supports nor defeats either party's position here.

(b) Caselaw

Therefore, once again-as in the Court's earlier consideration of *Lionel* and its progeny and the cases establishing the judge-made law of *sub rosa* plans-the Court must go beyond the words of the Code to the applicable caselaw.

Viewed nationally, the caselaw is split in this area, both at the Circuit Court level and in the bankruptcy Courts. Some courts have held that section 363(f) provides a basis for selling free and clear of successor liability claims,[FN100] and others have held that it does not.[FN101]

FN100. *See, e.g.*, *Chrysler*, 405 B.R. at 111; *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir.2003) (" *TWA* "); *United Mine Workers of*

Am.1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.), 99 F.3d 573, 581-82 (4th Cir.1996).

FN101. *See, e.g.*, *Michigan Empl. Sec. Comm. v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147-48 (6th Cir.1991); *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC (In re Qualitech Steel Corp.)*, 327 F.3d 537, 545-46 (7th Cir.2003); *Fairchild Aircraft Corp. v. Cambell (In re Fairchild Aircraft Corp.)*, 184 B.R. 910, 918 (Bankr.W.D.Tex.1995), *vacated as moot on equitable grounds*, 220 B.R. 909 (Bkrtcy.W.D.Tex.1998).

See also *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr.N.D.Ohio 1987) (concluding that 363(f) could not be utilized, but that section 105(a) could be used to effect 363 sale free and clear of claims).

***504** But the caselaw is *not* split in this Circuit and District. In *Chrysler*, Judge Gonzalez expressly considered and rejected the efforts to impose successor liability. And more importantly, the Second Circuit, after hearing extensive argument on this issue along with others, affirmed Judge Gonzalez's *Chrysler* order for substantially the reasons Judge Gonzalez set forth in his *Chrysler* decision.

This Court has previously noted how *Chrysler* is so closely on point, and this issue is no exception. Judge Gonzalez expressly considered it. In material reliance on the Third Circuit's decision in *TWA*, "the leading case on this issue," Judge Gonzalez held that *TWA:*

> makes clear that such tort claims are interests in property such that they are extinguished by a free and clear sale under section 363(f)(5) and are therefore extinguished by the Sale Transaction. The Court follows *TWA* and overrules the objections premised on this argument.... [I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction.[FN102]

FN102. 405 B.R. at 111.

[34][35] This Court has already noted its view of the importance of *stare decisis* in this district,[FN103] and feels no differently with respect to this issue. This Court follows the decisions of its fellow bankruptcy judges in this district, in the absence of plain error, because the interests of predictability in commercial bankruptcy cases are of such great importance. Apart from the underlying reasons that have caused *stare decisis* to be embedded in American decisional law, *stare decisis* is particularly important in commercial bankruptcy cases because of the expense and trauma of any commercial bankruptcy, and the need to deal with foreseeable events, by pre-bankruptcy planning, to the extent they can be addressed. Likewise, litigation, while a fact of life in commercial bankruptcy cases, takes money directly out of the pockets of creditors, and predictability fosters settlements, since with predictability, parties will have an informed sense as to how any disputed legal issues will be decided.

FN103. *See* 486-87, n. 19 above.

Though for all of these reasons, this Court would have followed *Chrysler* even if that case had no subsequent history, we here have a hugely important additional fact. The Circuit affirmed *Chrysler, and* for "substantially for the reasons stated in the opinion below."

Those two matters are somewhat different, and each merits attention. Appellate courts review judgments (or orders), not statements in opinions. [FN104] With the Circuit having affirmed, application of that principle would not, in the absence of more, necessarily suggest agreement with any reasoning Judge Gonzalez utilized in reaching his conclusion. But it would necessarily support agreement with his bottom line-at least on matters that were argued to the Circuit on appeal. Otherwise, the Circuit would not have affirmed.

FN104. *See, e.g.*, *O'Brien v. State of Vermont (In re O'Brien)*, 184 F.3d 140, 142 (2d Cir.1999); *Mangosoft, Inc. v. Oracle Corp.*, 525 F.3d 1327, 1330 (Fed.Cir.2008).

Here, of course, there is more-because the Circuit did not simply affirm without opinion, but it stated, as part of its order, that Judge Gonzalez's decision was affirmed "for substantially the reasons stated in the opinions below." While that might hint that the Circuit generally agreed with Judge Gonzalez's reasoning as ***505** well, it does not compel that conclusion. At this point, the Court concludes merely that the Circuit agreed with Judge Gonzalez's suc-

cessor liability issues bottom line.

But that alone is very important. One of the matters argued at length before the Circuit on the appeal was successor liability, both with respect to present claims [FN105] and unknown future claims.[FN106] They were hardly trivial elements of the appeal, and were a subject of questioning by members of the panel.[FN107] If the Circuit did not agree with Judge Gonzalez's conclusions on successor liability, after so much argument on that exact issue, it would not have affirmed.

FN105. *See* Tr. of Arg. before Second Circuit, No. 09-2311 (2d Cir. June 5, 2009) ("2d Cir. Arg. Tr.") at 17-22 (current tort claims); 47-49 (current tort claims); 60-62 (current tort claims).

FN106. 2d Cir. Arg. Tr. at 22-26 (future and, to a limited extent, current, product liability claims); 26-29 (current and future asbestos claims); 45-46 (future asbestos and tort claims); 62-64 (future asbestos claims).

FN107. This Court has previously noted that it is hesitant to draw too much from the questions judges ask in argument. *See In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 636 n. 44 ("Thoughts voiced by judges in oral argument do not always find their way into final decisions, often intentionally and for good reason.") Thus the Court does not rely on anything that was said in the way of questions in the *Chrysler* appeal for the purpose of trying to predict the Circuit's thinking or leanings. This Court looks to the *Chrysler* argument questioning solely for the purpose of noting the issues that were before the Circuit, and that got its substantive attention.

Thus the Court has, at the least, a judgment by the Second Circuit that 363(f) may appropriately be invoked to sell free and clear of successor liability claims. The claims sought to be preserved here are identical to those in *Chrysler.* And *Chrysler* is not distinguishable in any legally cognizable respect.[FN108] On this issue, it is not just that the Court feels that it *should* follow *Chrysler.* It *must* follow *Chrysler.* The Second Circuit's *Chrysler* affirmance, even if reduced solely to affirmance of the judgment, is controlling authority.[FN109]

FN108. The Court cannot agree with the suggestion that *Chrysler* is distinguishable because the purchaser there, Fiat, was a commercial entity, and that the purchaser here is an entity formed by the U.S. and Canadian Governments. We are talking about an issue of statutory interpretation here, and the Code makes no distinction in that regard.

FN109. *Collier* states that "[a]lthough some courts have limited the term ["interest in property," as used in section 363(f)] to *in rem* interests in the property, the trend seems to be in favor of a broader definition that encompasses other obligations that may flow from ownership of the property." 3 *Collier* at ¶ 363.06[1]. Though *Collier* is of course consistent with this Court's conclusion, the Court regards the caselaw holdings in this Circuit and District as more important.

This Court fully understands the circumstances of tort victims, and the fact that if they prevail in litigation and cannot look to New GM as an additional source of recovery, they may recover only modest amounts on any allowed claims-if, as is possible, they do not have other defendants who can also pay.[FN110] But the law in this Circuit and District is clear; the Court will permit GM's assets to pass to the purchaser free and clear of successor liability claims, and in that connection, will issue the requested findings and associated ***506** injunction.[FN111]

FN110. They may have resort to dealers, and the proposed sale motion also contemplates that New GM will indemnify dealers for losses of this type, whenever the claims arose. While this would seemingly greatly reduce the number of instances where a plaintiff cannot recover meaningful amounts if liability is established, the Court does not suggest that it will cover all of them.

FN111. Findings and an injunction of the character requested were issued in each of *Chrysler* and *TWA. See Chrysler,* No. 09-50002 (Bankr.S.D.N.Y. June 1, 2009) (Order Granting 363 Sale ¶¶ W-BB, 9-23); *TWA*, 322 F.3d at 286-87.

3. Asbestos Issues

[36] The Asbestos Litigants raise the same successor liability issues just addressed, and additionally advance the interests of future victims of asbestos ailments (though their counsel do not represent any); *future* victims would

not yet know that they have any asbestos ailments, or to whom they might look to bring litigation, if necessary. The Asbestos Litigants' concerns as to a sale free and clear of asbestos liability claims, like those of tort litigants, have already been discussed, and the Court, while also sympathetic to asbestos victims, must rule similarly.

But the Court must separately address the separate issues concerning asbestos ailments, in light of the reality that those ailments may take many years to be discovered, during which asbestos victims would not know that they should be filing claims.

The Asbestos Litigants object to GM's effort to "channel all present and future asbestos personal injury claims to Old GM and to shield New GM from 'successor liability' claims ... without the appointment of a future claims representative and the other express requirements mandated by Congress in 11 U.S.C. § 524(g)." [FN112] But that overstates, in material part, what GM is trying to do. It is unnecessary to "channel" present asbestos injury claims to GM, as that is where they already are, and belong. And New GM has not yet done anything wrong, if it ever will. So the bulk of the Asbestos Litigants' contention is simply a variant of the successor liability issues that the Court just addressed, and must be decided the same way.

FN112. Asbestos Br. at 2.

Where there *is* a separate issue is claims for *future* injuries that people exposed to asbestos might suffer when they don't yet know of their ailments or the need to sue or assert a claim. The Court refers to those as "**Future Claims,**" while noting that they are not yet "claims" as defined in the Bankruptcy Code. Efforts to deal with such circumstances led to the enactment of section 524(g) of the Code, which *inter alia* authorizes injunctions, under a reorganization plan, to enjoin actions against nondebtors by those who have a right of recovery from a trust created to address their claims, in accordance with more detailed provisions set out in section 524(g). (Those provisions also include the appointment of a future claims representative.)

The Debtors ask for findings that New GM will not be deemed to be a successor of Old GM, and ask for an injunction barring those holding Future Claims, like others, from pursuing New GM. The Asbestos Litigants contend that such an injunction would walk, talk and quack like a section 524(g) injunction, and that it thus is impermissible. The Debtors respond that we do not yet have a request to approve a plan, and that these issues are now premature-better to be considered if and when they ever ask for a 524(g) injunction.

The Court does not have to decide these issues now, except in a modest way. The Asbestos Litigants' counsel represent only individuals with *present* asbestos ailments, and do not represent future claimants. Thus the Court has material difficulty in seeing how they have standing to assert *other's* needs and concerns, or how they ***507** would be persons aggrieved, on any appeal, if the Court ruled adversely to them on future claims issues.

By the same token, the Court fully recognizes that the notice given on this motion was not fully effective, since without knowledge of an ailment that had not yet manifested itself, any recipient would be in no position to file a present claim.[FN113]

FN113. *See Chrysler* Arg. Tr. at 46, 47, 72-73 (colloquy, principally with Judge Sack, with respect to this issue). Once more, the Court does not read those questions as telegraphing any views or decision of the Circuit as to these issues, but rather as helping this Court focus on matters worthy of consideration.

This objection raises classic standing *and* ripeness issues. And, in addition, the Court does not know if anyone in the future would have a legally valid objection as to the requested injunction-especially if Old GM were still in existence, and a claim could be filed with Old GM. The Court is doubtful that it should be erecting barriers to GM's ability to reorganize by creating hurdles at the behest of people who lack standing, but at the same time, is not of a mind to do anything that might be constitutionally suspect. The Future Claims issues, in the Court's view, are best addressed here by adding language to the injunction paragraph to which objection has been made, applicable (only) to asbestos claims and demands, making the injunction enforceable "to the fullest extent constitutionally permissible." That limitation should address both sides' legitimate future claims concerns. The Court's order will read accordingly.

4. Environmental Issues

[37] Certain objectors-most notably, New York's Attorney General (the "**New York AG**"), who enforces New York's environmental laws, and the St. Regis Mohawk Tribe (the "**Tribe**"), in upstate New York (together, the "**Environmental Matters Objectors**")-have voiced concerns as to

whether any approval order would too broadly release either Old GM or New GM from their respective duties to comply with environmental laws and cleanup obligations. Objections of this character were a matter of concern to this Court as well, but they were addressed-very well, in this Court's view-by amendments to the proposed order that were made after objections were due. The additional language provides that:

> 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.[FN114]

FN114. Proposed Order ¶ 61

Another paragraph goes on to say:

> 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***508** 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.[FN115]

FN115. *Id.* ¶ 62.

Especially collectively, they make it quite clear that neither Old GM nor New GM will be relieved of its duty to comply with environmental laws.

Those changes deal with much, but not all, of the Environmental Matters Objectors' concerns. The remaining objections, however, must be overruled.

The Environmental Matters Objectors understandably would like New GM to satisfy cleanup obligations that were the responsibility of Old GM, on theories of successor liability. For reasons articulated in the Court's "Successor Liability Issues" discussion in Section 2 above, however, the property may be sold free and clear of such claims.

Indeed, further reinforcing that view (as well as the Court's decision to follow *Chrysler*) is this Court's decision, seven years ago, in *Mag. Corp.*[FN116] There, upon the sale of property with substantial environmental issues, this Court was faced with the exact same issue-to what extent could that property be sold free and clear of environmental claims under 363(f). This Court ruled that one had to make a distinction. Under section 363(f), there could be no successor liability imposed on the purchaser for the seller MagCorp's monetary obligations related to cleanup costs, or any other obligations that were obligations of the seller. But the purchaser would have to comply with its environmental responsibilities starting with the day it got the property, and if the property required remediation as of that time, any such remediation would be the buyer's responsibility:

FN116. Tr. of Hr'g, *In re Magnesium Corporation of America*, No. 01-14312, 2002 WL 32772333 (Bankr.S.D.N.Y. June 4, 2002) (ECF # 290).

> When you are talking about free and clear of liens, it means you don't take it subject to claims which, in essence, carry with the property. It doesn't absolve you from compliance with the law going forward.[FN117]

FN117. *Id.* at 129.

Those same principles will be applied here. Any Old GM properties to be transferred will be transferred free and clear of successor liability, [FN118] but New GM will be liable from the day it gets any such properties for its environmental responsibilities going forward. And if the State of New York (or, to the extent it has jurisdiction, the Tribe) feels a need to cause any acquirer of Old GM property to engage in remedial action because of environmental issues existing even at the outset of the acquirer's ownership,

nothing in this Court's order will stand in its way.

> FN118. The Court understands that the Purchaser does not want the Massena site and that it will not be transferred to New GM, but it is unclear to the Court whether Old GM will want to sell the Massena site to someone else or abandon it. Certainly, if the Purchaser does not wish to take the Massena site, it does not have to. If Old GM wishes to abandon the Massena site, the Environmental Matters Objectors, or some of them, will have rights to be heard, and may have substantive future rights. The Court does not decide any of those additional issues at this time.

***509** *5. Splinter Union Retiree Issues*

Three unions-the IUE, the Steelworkers, and the Operating Engineers (referred to by all parties as the "**Splinter Unions**") also have filed an objection. The Splinter Unions submit affidavits from many of their retirees, describing, in moving detail, their difficulties in getting by, and how decreased medical benefits would directly impact them. The hardship would be particularly great on those not yet eligible for Medicare, as the U.S. does not yet have comparable medical insurance for those below the qualifying age, if it ever will.

[38] But fully acknowledging, as one must, the hardship that the Splinter Union Retirees would suffer, the legal issue before this Court is whether section 1114 of the Code applies to a transaction of the type we have here, and whether a purchaser of assets must assume liabilities that it does not want to voluntarily assume. The answer to each of those questions must be "no."

The Splinter Unions understandably rely on section 1114 of the Code, a provision that was added to the Code to provide additional rights as to retiree insurance benefits, most significantly, medical and life insurance (for the purposes of this discussion, "**Retiree Benefits**"). Generally speaking, section 1114 attempts to balance the needs and concerns of retirees with the reality that large legacy Retiree Benefits obligations not infrequently can impair debtors' ability to reorganize, and that chapter 11 debtors often cannot afford to pay Retiree Benefits as they were previously offered.

While section 1114 is too long to quote here in full, it provides, in substance, for a procedure that must be complied with before a chapter 11 debtor can modify or not pay Retiree Benefits. Modifying or ending benefits requires a motion to be approved by the bankruptcy court. Prior to filing such a motion, the debtor or trustee must first make a proposal to the retirees' representative-usually their union, if there is one, or alternatively a committee to act on their behalf.

The proposal is supposed to provide "for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assure [ ] that all creditors, the debtor and all of the affected parties are treated fairly and equitably...." The parties are then "to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits."

If agreement is not forthcoming, the motion may proceed further. Under section 1114(g) (with exceptions and provisos not relevant here):

> The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that-
>
> (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);
>
> (2) the authorized representative of the retirees has refused to accept such proposal without good cause; and
>
> (3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities....

Here GM has stated that before Old GM stops paying or modifies Retiree Benefits, it will comply with section 1114. But as a practical matter, Old GM will be liquidating, and it will not be able to keep making these payments very much longer. After that, even if Old GM makes a proposal in good faith (as the Court assumes it will), ***510** the Splinter Union retirees may well be left with unsecured claims, with the relatively low recoveries on their unsecured claims that all other unsecured creditors will receive, and with the delays in getting distributions on allowed claims that are an unfortunate reality of the bankruptcy process.

And New GM has not agreed to assume liability for the

Splinter Union Retiree Benefits.[FN119] It declined to do so, while going further for other unions, especially the UAW, because with very limited exceptions, the Splinter Unions no longer have active employees working for GM, and the U.S. Treasury-triaging its ability to undertake obligations, and trying to make New GM as lean and as viable as possible-allocated its available money to spend it only where necessary to build a new and stronger GM.[FN120]

FN119. New GM has offered to assume the liability to provide Retiree Benefits to a certain extent, but in, dramatically reduced amount. Its proposal in that regard was unacceptable to the Splinter Unions and a counterproposal by the Splinter Unions has not been accepted. On July 2, the Court approved settlements between GM and other non-UAW unions under which New GM would assume Retiree Benefits for them, but again in dramatically reduced amounts.

FN120. The obligations in question are very sizeable-more than $3 billion in retiree health care and hundreds of millions more for retirement life insurance. Splinter Union Obj. ¶ 4. Those large figures show why the Splinter Unions care about the issue, and why New GM feels that it cannot assume those obligations when such a small number of Splinter Union members will be working for New GM.

With that by way of backdrop, the Court considers the legal issues. The Splinter Unions argue in substance, that the 363 Transaction constitutes a forbidden *sub rosa* plan. But this contention has previously been addressed. The remaining issue is the extent, if any, to which special 1114 rights for retirees make an otherwise permissible transaction impermissible.

Once more the Court starts with textual analysis, and looks to the words of the statute. The most relevant portions of section 1114 are the portions that impose the continuing duties to pay retiree benefits; not to end or modify them; and to negotiate with unions or other retiree representatives before changing them. Apropos the first (the continuing duty to pay), section 1114(e) is relevant. It provides, in relevant part:

> (e)(1) Notwithstanding any other provision of this title, *the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter (hereinafter in this section "trustee" shall include a debtor in possession),* shall timely pay and shall not modify any retiree benefits, except that-
>
> (A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or
>
> (B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,
>
> after which such benefits as modified shall continue to be paid by the *trustee.*[FN121]
>
> FN121. Section 1114(e) (emphasis added).

Thus, under the words of the statute, these are duties imposed upon the trustee (which includes, by express reference, the debtor in possession)-not anyone else.

With respect to the second (the duty not to end or modify), the relevant portion is that same section 1114(e) ("the debtor in ***511** possession, or the trustee if one has been appointed ... shall not modify any retiree benefits"). Once more, the duty not to end or modify is not statutorily imposed on anyone else.

With respect to the third (the duty to negotiate before filing a motion to modify benefits) the relevant portion is 1114(f):

> (f)(1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the *trustee* shall-
>
> (A) make a proposal to the authorized representative of the retirees....

Here too, by the words of the Code, the duty is imposed upon the trustee.

Finally, the Court notes that section 363 is silent with respect to any need to first comply with section 1114 before effecting a section 363 sale.

Turning beyond textual analysis to the caselaw, the Court has seen nothing to establish a violation of law. The Splinter Unions cite no authority holding or suggesting that

a purchaser of assets from an entity with section 1114 obligations must assume the debtor seller's duty to comply with section 1114's provisions. Nor do they cite such law considering section 1113 of the Code, which, while dealing with collective bargaining agreements, imposes similar duties.

On the other hand, *Chrysler* is helpful, though it did not expressly address this issue. In considering a closely similar transaction, Judge Gonzalez did not find there to be section 1114 impediments, even for non-UAW retirees. FN122

> FN122. With respect to section 1114 matters and related issues, he stated:
>
> > The objecting retirees represented by the UAW objected to the modification of retiree benefits under the settlement agreement between New Chrysler and the UAW, but those objections are overruled because the UAW was the objectors' authorized representative under section 1114, and the modifications were negotiated in good faith pursuant to that section. The objecting retirees not represented by the UAW whose benefits are adversely impacted may have unsecured claims against the Debtors' estates, but the purchased assets are sold free and clear of those potential unsecured claims. For those reasons, their objections to the Sale Motion are overruled. Further, the Court finds that if the Sale Motion were not approved, which would likely result in the Debtors' liquidation, there would likely be no value to distribute any retirees, all of whom would be unsecured creditors.
>
> 405 B.R.at 110.

The Splinter Unions argue that "section 1114 cannot be ignored in the § 363 process," FN123 but that is not what GM is asking the Court to do. GM acknowledges its duties to comply with section 1114, and so far as the record reflects, has not failed in any of its duties in that respect so far. If, in the future, GM does not comply with its section 1114 duties (or is perceived to be failing to comply in that regard), the Splinter Unions, or anyone else with standing, could of course bring that to the Court's attention. But the Splinter Union's real objection is that the Purchaser is not volunteering to comply with section 1114, and under the words of the statute, the Purchaser is not within the zone of persons upon whom section 1114 places duties.

> FN123. Splinter Union Obj. ¶ 79.

[39] The Splinter Unions note that there is another arguably relevant provision of the Code that must be considered, section 1129(a)(13). Section 1129 sets forth the requirements for confirmation of a chapter 11 plan, and the provisions in its subsection (a) include a list of requirements for confirmation of any chapter 11 plan. Section 1129(a) provides, in relevant part:

> ***512** (a) The court shall confirm a plan only if all of the following requirements are met:
>
> ...
>
> (13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

There can be no doubt that compliance with section 1129(a)(13), along with the other 15 subsections of section 1129(a), is a requirement for confirmation of a plan. But the Court has already addressed arguments of this character, as raised by bondholders in different contexts. The Court is not here considering confirmation of a plan; it is considering a section 363 transaction, and because there is a good business reason for selling the assets now, and there is not here a *sub rosa* plan, requirements of section 1129, including section 1129(a)(13), do not apply.

The Court fully realizes that UAW retirees will get a better result, after all is said and done, than Splinter Union Retirees will, but that is not by reason of any violation of the Code or applicable caselaw. It is because as a matter of reality, the Purchaser needs a properly motivated workforce to enable New GM to succeed, requiring it to enter into satisfactory agreements with the UAW-which includes arrangements satisfactory to the UAW for UAW retirees. And the Purchaser is not similarly motivated, in triaging its expenditures, to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM.

The Court has also considered the Splinter Unions' point that in pre-bankruptcy planning, GM and the U.S. Treasury

focused on the duties to Splinter Union Retirees, and made a conscious decision that Splinter Union retirees would not be offered as good a deal as others. But the Court cannot find that there was any "conspiracy" in that regard, nor that there was any intention to disregard applicable law. The U.S. Treasury, in making hard decisions about where to spend its money and make New GM as viable as possible, made business decisions that it was entitled to make, and the fact that there were so few Splinter Union employees still working for GM was an understandable factor in that decision. The Court's responsibility is not to make fairness judgments as to those decisions, but merely to gauge those decisions under applicable law.

The Splinter Unions' objection must be overruled.

6. Dealer Issues

As noted, the 363 Transaction contemplates that GM's present dealer network of about 6,000 dealers will be made more efficient, continuing approximately 4,100 of its dealers, and ending its relationship, though not instantly, with approximately 1,900 others.[FN124] In cooperation with State AGs, and the Unofficial Dealers Committee [FN125] (the "**Dealer Committee**"), GM and the Purchaser agreed on additional language***513** in the sale order for the protection of dealers, and the AGs and the Dealer Committee withdrew their objections to the sale. However, a local dealers association, the Greater New York Automobile Dealers Association (the "**New York Dealers Association**"), seeking to be heard as an *amicus,* filed a brief contending that the Participation Agreements and Deferred Termination Agreements that more than 99% of GM dealers entered into were coerced and unlawful.

> FN124. Henderson Decl. ¶¶ 92-93.
>
> FN125. The Unofficial GM Dealers Committee was formed prior to the filing of GM's chapter 11 case by the GM National Dealer Council in coordination with the National Automobile Dealers Association. It was formed to act as a voice for the dealer body's collective interests in connection GM's restructuring efforts. Its members sell and service vehicles under GM brands in locations all over the country.

[40] Initially, the Court deals with a matter of standing, to which it became more sensitive, after oral argument, upon rereading the New York Dealers Association's *amicus* brief. The New York Dealers Association does not purport to speak for a single identified GM dealer. It does not seek standing under section 1109. It speaks only as an *amicus.* And in addition, the main thrust of the New York Dealers Association *amicus* brief is not the protection of *GM* dealers. It is the protection of their *competitors.* The interests of *GM* dealers were the subject of the negotiations with the Dealer Committee and the AGs, and resolved to their satisfaction. While the New York Dealers Association objection professes to be speaking for the interests of GM dealers, its principal thrust is very different; it is to protect the interests of others who are competing with GM and (especially since it is a dealers' organization), competing with GM dealers.[FN126]

> FN126. *See, e.g.,* N.Y. Auto Dealers Obj. at ¶¶ 19, 20 ("GM seeks, through this proceeding, to gain advantage over other manufacturers."); *id.* ("Permitting GM in bankruptcy, to ignore state dealer laws upsets the competitive balance among GM and every other automotive manufacturer.").

Under these circumstances, the Court must note the lack of standing and that the New York Dealers Association may be heard as nothing more than as an *amicus;* note that the New York Dealers Association does not have section 1109 rights; and note that at least seemingly, if not plainly, the New York Dealers Association has interests largely adverse to those whom it is professing to help.[FN127]

> FN127. It also at least seemingly would not be a person aggrieved with standing to appeal, but that is an issue for the appellate courts.

[41] Then, turning to the merits of the New York Dealers Association arguments (assuming that, as *amicus,* it has any standing to make them), any objection that the New York Dealers Association might make-though it never says that it is making an "objection"-would have to be overruled, and to the extent it is making an objection, it *is* overruled. While the Court understands the unattractive choices that many dealers had to face, the Court cannot go so far as to hold that these agreements were "coerced" or are unlawful-even if (as the Court assumes, without deciding) those dealer rights could not be so modified outside of bankruptcy.

Implementation of federal bankruptcy policy permits debtors, for the benefit of the creditor body as a whole, to alter creditors' and contract counterparties' contractual rights. Corporate reorganization, by its nature, requires parties in interest to consider unattractive choices. One of

the relevant rights in bankruptcy is the right of a debtor to reject an executory contract with its contract counterparty, for the benefit of the debtor's other creditors. All concerned with GM's future knew that GM had to slim down and improve its dealer network, and that this required modifying dealer agreements before they were assumed and assigned-a process ***514** that led to the Participation Agreements. Similarly, as an alternative to simply leaving dealers who would otherwise be terminated in the lurch, GM proposed giving them a soft landing, in exchange for waivers of other rights-a process that led to the Deferred Termination Agreements. Those offers secured widespread acceptance; 99% of the continuing dealers accepted, and 99% of the dealers who eventually would be terminated took the offer.

The alternative, in each case was rejection. Contract counterparties do not have to accept what they are offered, and they may elect to stand on their rights. But here GM was not obligated, as a matter of law, to choose between leaving its dealer contracts unmodified or rejecting them. It could, if it wished, offer its contract counterparties deals that would more appropriately meet each side's needs and concerns, without fear that such deals would be subject to collateral attack by reason of assertions of coercion.

Directly on point are comments this Court made at the bankruptcy court level, and Judge Kaplan made at the district court level, in the *Adelphia* chapter 11 cases. There, in connection with the DoJ Settlement discussed above,[FN128] Adelphia agreed to provide $715 million to the United States Government (on behalf of both the DoJ and the SEC) in exchange for dropping threats of indictment and forfeiture, and settling claims that might otherwise have been pursued by the SEC. The settlement was attacked by Adelphia creditors, who charged that it was the result of unlawful coercion. In the same decision to which this Court previously referred, this Court disagreed, and on appeal, so did Judge Kaplan.

FN128. *See* discussion at 492-93, above.

This Court stated:

> [W]here the "coercion" results from differences in bargaining power, as a consequence of law or fact, or governmentally granted authority and discretion (such as the authority and discretion we grant to prosecutors, to achieve a common good), that is a wholly different kind of "coercion." As one of the banks' counsel aptly noted in argument on this motion, it is what we call "leverage." [FN129]
>
> FN129. *Adelphia Settlement-Bankruptcy*, 327 B.R. at 166.

Judge Kaplan, affirming, agreed-even going so far as to quote the language this Court just used-and continued:

> What the appellants characterize as coercion was no different in principle than the pressure that leads the overwhelming majority of defendants in criminal cases to plead guilty-the risk that a conviction after trial will result in a harsher sentence than is likely to be imposed following a guilty plea. Yet guilty pleas in such circumstances rightly are considered voluntary and uncoerced in any relevant sense.[FN130]
>
> FN130. *Adelphia Settlement-District*, 337 B.R. at 477.

For decades, counterparties to executory contracts with bankruptcy debtors have known that their agreements could be rejected, and debtors and contract counterparties have negotiated deals as alternatives to that scenario. When they have been so negotiated (with all knowing that the debtor has the option to reject if the existing deal is not modified to its satisfaction), that has never been regarded as unlawful coercion. Rather, it has been recognized as an appropriate use of the leverage that Congress has given to debtors for the benefit of all of the other creditors who are not contract counterparties,***515** and for whom the restructuring of contractual arrangements is important to any corporate restructuring.

The Court's observation in questioning at oral argument, with respect to dealer contract modifications, that "no good deed goes unpunished" (perhaps naively thinking at the time that the New York Dealers Association was advocating the interests of *GM* dealers) was, as it probably sounded, an indication of frustration with the New York Dealers Association's argument. And what the Court could have said then, and what it is saying now, is that the *last* thing bankruptcy courts should be doing is to be forcing debtors and their contract counterparties into situations where rejection is the only lawful alternative, subjecting other creditors to dilution on their recoveries by running up rejection damages, and subjecting contract counterparties to the full hardships of an executory contract rejection. There is no basis in law or fact for holding that these contractual modifications were unlawfully "coerced." Disapproving contractual modifications of the type here would

be squarely inconsistent with the goals of corporate reorganization.

As a practical matter, modifications negotiated by the Dealers Committee and the AGs mooted out many, if not all, of the New York Auto Dealers' complaints about the loss of dealer protection laws. To the extent they did not, however, the Court notes that Judge Gonzalez dealt with these same contentions in another decision in *Chrysler*. After concluding that Chrysler's rejection of dealership agreements constituted a valid exercise of business judgment, Judge Gonzalez found that the state franchise laws at issue, like those at issue here, frustrated the purposes of (and, thus, were preempted by) section 365. [FN131] To the extent that laws of the type relied upon by the New York Dealers Association-either state or federal-impair the ability to reject, or to assume and assign, they must be trumped by federal bankruptcy law. And to the extent that nonbankruptcy law prohibits debtors and their contract counterparties from finding mutually satisfactory less draconian alternatives to rejection, it likewise must be trumped.

FN131. *See In re Old Carco LLC*, 406 B.R. 180, 199-206 (Bankr.S.D.N.Y.2009); *see also id.* at 205-06 ("Where a state law 'unduly impede[s] the operation of federal bankruptcy policy, the state law [will] have to yield' ") (quoting *In re City of Vallejo*, 403 B.R. 72, 77 (Bankr.E.D.Cal.2009)).

As Judge Gonzalez explained:

> Specifically and by no means exclusively, statutory notice periods of, *e.g.*, 60 or 90 days before termination clearly frustrate § 365's purpose to allow a debtor to reject a contract as soon as the debtor has the court's permission (and there is no waiting period under the Bankruptcy Rules). Buy-back requirements also frustrate § 365's purpose to free a debtor of obligations once the debtor has rejected the contract. Good cause hearings frustrate § 365's purpose of giving a bankruptcy court the authority to determine whether a contract may be assumed or rejected. Strict limitations on grounds for nonperformance frustrate § 365's purpose of allowing a debtor to exercise its business judgment and reject contracts when the debtor determines rejection benefits the estate. So-called "blocking rights," which impose limitations on the power of automobile manufacturers to relocate dealers or establish new dealerships or modify existing dealerships over a dealer's objection, frustrate § 365's purpose of giving a debtor the power to decide which contracts***516** it will assume and assign or reject by allowing other dealers to restrict that power. [FN132]

FN132. 406 B.R. at 205-06; *see also Vallejo*, 403 B.R. at 77 (holding that "Congress enacted section 365 to provide debtors the authority to reject executory contracts. This authority preempts state law by virtue of the Supremacy Clause [and] the Bankruptcy Clause.") (internal citation omitted).

Judge Gonzalez also made clear that 28 U.S.C. § 959(b), on which the New York Dealers Association's *amicus* brief heavily relies, did not alter the Court's "preemption analysis," because that provision "does not de-limit the precise conditions on contract rejection"-particularly where, as in *Chrysler* and here, the pertinent state laws concern "consumer convenience and costs and the protection of local businesses, rather than a concern over public safety." [FN133]

FN133. 406 B.R. at 202-05. *See also* 406 B.R. at 204 ("In sum, the Dealer Statutes ... are concerned with protecting economic or commercial interests and are thus preempted by the Bankruptcy Code notwithstanding 28 U.S.C. § 959(b)") (citing *In re Baker & Drake, Inc.*, 35 F.3d 1348, 1353 (9th Cir.1994)); *id.* at 206 n. 32 (stating that "state law protections cannot be used to negate the Debtors' rejection powers under § 365.... 'The requirement that the debtor in possession continue to operate *according to* state law requirements imposed on the debtor in possession (i.e., § 959(b)) does not imply that its powers under the Code are *subject to* the state law protections.' ") (quoting *In re PSA, Inc.*, 335 B.R. 580, 587 (Bankr.D.Del.2005) (emphasis in original)).

To the extent that the New York Auto Dealers Association complains that GM gets a "competitive advantage over others not in bankruptcy," [FN134] that likewise is a complaint with respect to federal bankruptcy policy, which gives companies a chance to reorganize and shed burdensome obligations to achieve a greater good. That GM's reorganization will make New GM and GM dealers more competitive is not a bad thing; it is exactly the point.

FN134. N.Y. Auto Dealers Obj. ¶ 20.

The New York Auto Dealers' Association lacks standing to have its comments deemed to be an objection. To the extent that its *amicus* comments can be deemed to constitute an objection, any such objection is overruled.

7. ECC Trust

The Environmental Conservation and Chemical Corporation Site Trust Fund (the "**ECC Trust**") has also filed a limited objection. The ECC Trust was created as a means to implement a consent decree that GM and other parties entered into with the United States and the State of Indiana to clean up hazardous materials at the EnviroChem Superfund Site in Zionsville, Indiana (the "**Zionsville Site**"). The consent decree was approved in 1991 by the United States District Court for the Southern District of Indiana. Under the authority of the consent decree, the Trustee for the ECC Trust issued an assessment on April 20, 2009, requiring GM to pay approximately $63,000 into the ECC Trust. Shortly before the due date, GM notified the ECC Trust that it would not be paying its share, and filed its chapter 11 petition shortly thereafter.

The ECC Trust requests that this Court, using its "equitable powers," require that the Purchase Agreement be modified such that the ECC Trust's claim be designated an "Assumed Liability." Unfortunately, the Court cannot do that.

This Court need not, at this juncture, decide the vast majority of the issues presented by the parties at oral argument-including, especially, whether a consent decree is considered a contract or a judicial decree for enforcement purposes, and ***517** whether this particular consent decree created a monetary obligation, which would be regarded like any other unsecured claim, or was in fact a mandatory injunction to clean up the Site.

For now it is sufficient to note that the ECC Trust's present rights are against *Old GM*. Under the ECC Trust's best case scenario, as argued, the ECC Trust may be able to secure equitable relief against Old GM. But whether the ECC Trust can enforce an injunction against Old GM, or must instead live with an unsecured claim, is an issue for another day.

[42][43][44] Whatever the ECC Trust's rights are against Old GM, there is no basis for this Court to use its "equitable powers" to force the Purchaser to assume this liability. This Court has found that the Purchaser is entitled to a free and clear order. The Court cannot create exceptions to that by reason of this Court's notions of equity. As this Court noted in another of its *Adelphia* decisions, it is not free to use its equitable powers to circumvent the Code.[FN135] Decisions of the Second Circuit make it clear that, even with the presence of section 105(a), bankruptcy judges are not free to do whatever feels right.[FN136]

FN135. *See In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 664 (Bankr.S.D.N.Y.2006).

FN136. *See, e.g., In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 & n. 4 (2d Cir.1994) ("It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.... We have repeatedly emphasized the importance of the bankruptcy court's equitable power." But "[t]his power is not unlimited. Thus, a bankruptcy court may not exercise this power in contravention of provisions of the Code."); *In re Joint Eastern & Southern District Asbestos Litig.*, 982 F.2d 721, 751 (2d Cir.1992) (*"Asbestos Litigation* ") ("[A] reorganization is assuredly governed by equitable considerations, but that guiding principle is not a license to courts to invent remedies that overstep statutory limitations."); *see also In re Aquatic Dev. Group, Inc.*, 352 F.3d 671, 680 (2d Cir.2003) (Straub, J., concurring) (" *Aquatic Development* ") ("[T]his Court has repeatedly cautioned that 105(a) 'does not "authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity." ' "), quoting *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 92 (2d Cir.2003) (" *Dairy Mart* "), in turn quoting *U.S. v. Sutton*, 786 F.2d 1305, 1308 (5th Cir.1986).

Insufficient justification has been provided for this Court to force the Purchaser to assume this liability, in the face of section 363(f)'s explicit language allowing the sale of property "free and clear" of such liabilities. The Court is aware that the requested relief would have a very modest impact on the Purchaser, but is nevertheless required to issue a principled decision.

8. "Equally and Ratably" Issues

[45] Pro se unsecured bondholders Parker and Radha R.M. Narumanchi raise objections that they should be treated as secured creditors, and have not been. They contend that the indenture for their bonds (the 1995 issue, whose indenture trustee, represented by skilled counsel, did not raise a similar objection) had an "equal and ratable clause," boosting their bonds to secured debt status if liens were

thereafter put on certain manufacturing facilities. They then contend that when the 2008 Prepetition Financing was put in place, it triggered their equal and ratable clauses, making them secured.

The Court agrees that the bonds have an equal and ratable clause. But it cannot agree that it was triggered. The 2008 Prepetition Financing Documents expressly carved out from the grant of the security interest under those documents any instance***518** where it would trigger, *inter alia,* the equal and ratable clause.

The 2008 Prepetition Financing granted the U.S. Treasury a lien, subject to exceptions not applicable here, on a wide array of property. But it expressly did not put a lien on what it called "**Excluded Collateral.**" [FN137] Excluded Collateral included, among other things:

> FN137. *See* 2008 Prepetition Agreement Section 4.01 (proviso generally providing that collateral would not include "Excluded Collateral," a term defined elsewhere in that agreement).

> (v) any Property, including any debt or Equity Interest and any manufacturing plan or facility which is located within the continental United States, to the extent that the grant of a security interest therein to secure the Obligations *will result in a lien, or an obligation to grant a lien, in such Property to secure any other obligation.*[FN138]

> FN138. *Id.* Section 1.01-"Excluded Collateral" (v) ("Definitions") (emphasis added).

Thus when liens were granted in favor of the U.S. Treasury in December 2008, the U.S. Treasury was not granted a lien on any of the Excluded Collateral-including, as relevant here, anything that would trigger the equal and ratable clause.[FN139]

> FN139. It does not matter if, as Parker suggested but did not prove, the U.S. Treasury unintentionally or even intentionally recorded a mortgage or UCC-1 covering the property mentioned in the equal and ratable clause. Doing so would only have *perfected* a lien, assuming that one was granted in the first place. Here there was no grant of any lien, and perfecting such a nonexistent lien would be meaningless.

9. Unauthorized Use of TARP Funds Issues

Bondholder Parker (so far as the Court can tell, the only one of the 850 objectors) objects to the 363 Transaction on the additional ground that the U.S. Government was not authorized to use TARP funds to assist the auto industry, and hence that the 363 Transaction is unlawful. The Court agrees with the United States Attorney that the issue of the U.S. Treasury's lending authority now is moot, and that Mr. Parker lacks standing to raise the issue. Thus the Court does not need to reach the third issue.

[46] First, the Court agrees that the objection is moot. The 363 Transaction does not involve any expenditure of TARP funds. It simply involves a credit bid by the Purchaser-as an assignee of secured debt held by EDC (as to whom no objection is made) and the U.S. Treasury-of amounts due on previous loans under the U.S. Treasury Prepetition Loan and the DIP Financing Facility.

No party objected to the use of TARP funds in connection with the DIP Financing Facility, or when GM got the assistance it did before the filing of GM's chapter 11 case. And the Court approved the DIP Financing Facility after full hearing and notice. It was *then* that the U.S. Treasury became a lender, not now. Complaints that the U.S. Treasury should not have lent the money to GM are now moot.

[47] Second, the Court once more agrees with the United States Attorney that Mr. Parker lacks standing to challenge the U.S. Government's lending authority here. Judge Gonzalez addressed this exact issue in *Chrysler-Standing,*[FN140] the second of the two decisions that were affirmed by the Circuit.

> FN140. *See* 405 B.R. at 83.

The Court does not need to repeat all of the elements of Judge Gonzalez's analysis in *Chrysler-Standing,* nor what this Court has stated previously with respect to the importance of *stare decisis,* or its compliance***519** with decisions of the Second Circuit. Here, as in *Chrysler-Standing,* an unsecured creditor like Mr. Parker does not establish the injury-in-fact necessary to establish constitutional standing under Article III because "all holders of unsecured claims are receiving no less than what they would receive in a liquidation." [FN141] And even assuming that the 363 Transaction itself injured bondholders like Mr. Parker (though it is difficult to see how, since without the 363 Transaction, GM would have to liquidate), Mr. Parker cannot demonstrate standing because he cannot show that

any such injury is "fairly traceable" to the Government's use of TARP funds, as opposed to the 363 Transaction itself.

FN141. *Chrysler-Standing*, 405 B.R. at 83.

As Judge Gonzalez explained in *Chrysler-Standing*, "[i]f a non-governmental entity were providing the funding in this case, the [objectors] would be alleging the same injury.... In this light, it is not the actions of the lender that the [objectors] are challenging but rather the transaction itself. Specifically, the [objectors'] alleged injury is not fairly traceable to the U.S. Treasury's actions because the [objectors] would suffer the same injury **regardless** of the identity of the lender." FN142

FN142. *Id.*

Under these circumstances, the Court need not address Mr. Parker's third point. This objection is overruled.

10. Cure Objections

Many contract counterparties-more than 500-voiced objections to GM's estimated cure amounts, generally expressing different perceptions as to the exact amounts GM owes them. These differences would eventually have to be resolved, since to assume an executory contract (and GM is assuming thousands of them), most prepetition defaults would have to be cured.

GM proposed a mechanism for fixing the cure amount entitlements-an amalgam of exchanges of information, negotiation, ADR, and court determination, if needed. Significantly, while many parties had differing views as to the amounts to which they were entitled, none voiced objections to the method GM proposed. As those counterparties will remain eligible for their full legal entitlements, the Court finds the proposed mechanism fully satisfactory, and it is unnecessary and inappropriate to rule on all of the cure amount issues here.

11. UAW Settlement Objections

Approximately 56 UAW retirees-somewhat numerous in number, but a miniscule portion of the estimated 500,000 covered under the UAW Settlement Agreement-object to the UAW Settlement Agreement. In general, they express (understandable) disappointment with a settlement that results in a reduction of their health benefits. But they do not articulate objections legally cognizable under the law.

The Curson testimony, in particular, evidences the sensitivity to member and retiree needs and concerns of the UAW leadership. As discussed at considerable length above, the UAW had to make very hard decisions as to concessions it would make on behalf of its members and retirees to preserve GM's viability-and to avoid a liquidation that would be disastrous for the people the UAW was trying to help. The UAW was successful in preserving an acceptable level of core medical benefits. And as the UAW properly observes in its brief, if the UAW had not done as well as it did, its agreement would not have been ratified.

***520** Given the alternatives, it is easy to find that the UAW settlement is fair and equitable, from the perspective of both the GM estate and UAW members. It falls well within the range of reasonableness from GM's perspective, and is fair, reasonable and in the best interest of the UAW retirees.

12. Stockholder Objections

[48] Many GM stockholders, understandably disappointed that the 363 Transaction will leave them with no recovery, have voiced objections. Once again, the Court is sensitive to their concerns, but cannot help them. GM is hopelessly insolvent, and there is nothing for stockholders now. And if GM liquidates, there will not only be nothing for stockholders; there will be nothing for unsecured creditors.

Under those circumstances, GM stockholders cannot claim to be aggrieved by the transactions before the Court here.

13. Miscellaneous Objections

The Court cannot lengthen this decision further by specifically addressing any more of the approximately 850 objections that were raised on this motion. The Court has canvassed them and satisfied itself that no material objections other than those it has specifically addressed were raised and have merit. To the extent those objections were not expressly addressed in this decision, they are overruled.

Conclusion

The 363 Transaction is approved. The Court is entering an order in accordance with this Decision.FN143

FN143. The order entered by the Court differs from the revised proposed order submitted by the Debtors in a few respects: The order entered by the Court adds this Decision to the places where Findings of Fact are set forth and where Conclusions of Law may be found. It adds "to the fullest extent constitutionally permissible" in connection with the injunction as to successor liability claims, to address notice or other due process issues that might otherwise exist with respect to future asbestos claims or "demands" as discussed above. And like the order entered by Judge Gonzalez in *Chrysler*, the order shortens the Fed.R.Bankr.P. 6004(h) and 6006(d) periods, but still provides 4 days, so as to avoid effectively precluding any appellate review.

Bkrtcy.S.D.N.Y.,2009.
In re General Motors Corp.
407 B.R. 463, 51 Bankr.Ct.Dec. 225

END OF DOCUMENT

Exhibit 4

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

MARTIN EHRLICH, individually, and on behalf of a class of similarly situated individuals; Plaintiff, v. BMW OF NORTH AMERICA, LLC; Defendant.	CV 10-1151 ABC (PJWx) ORDER RE: MOTION TO DISMISS CLASS ACTION COMPLAINT OF PLAINTIFF MARTIN EHRLICH PURSUANT TO FED. R. CIV. P. 12(b)(6)

Pending before the Court is Defendant BMW of North America, LLC's ("BMW's") Motion to Dismiss Class Action Complaint of Plaintiff Martin Ehrlich Pursuant to Fed. R. Civ. P. 12(b)(6), filed on May 7, 2010. Plaintiff Martin Ehrlich opposed on June 28, 2010 and BMW replied on July 12, 2010. The Court found the matter appropriate for resolution without oral argument and vacated the August 9, 2010 hearing date. Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons below, the motion is GRANTED IN PART and DENIED IN PART. Leave to amend is GRANTED within the limits discussed below.

FACTUAL ALLEGATIONS[1]

Plaintiff has brought this action against BMW on his own behalf and "on behalf of all similarly situated persons who own or lease, or have owned or leased . . . certain defective vehicles manufactured and sold by" BMW. (First Amended Compl. ("FAC") ¶ 1.) He alleges that BMW designed, manufactured, and sold BMW MINIs from 2001 to 2010 that it knew contained a design flaw that caused the windshield in those vehicles to have a high propensity to crack or chip under circumstances that would not cause non-defective windshields to similarly fail. (FAC ¶¶ 2–3.)

Plaintiff purchased a new 2005 BMW Mini Cooper S from a BMW dealer in Monrovia, California in December of 2004. (FAC ¶ 20.) In March 2008, the windshield of Plaintiff's Mini cracked when he used the sponge portion of a squeegee on it at a gas station. (FAC ¶ 21.) At that time, Plaintiff's MINI had approximately 51,933 miles on it (FAC ¶ 22), which was beyond the New Car Warranty of 4 years or 50,000 miles, whichever occurs first (FAC ¶ 67; Kizirian Decl., Ex. 1 at 4). When he brought it into a BMW dealership, the dealer informed him that the windshield would not be covered by his warranty, so Plaintiff paid $929.14 to replace it. (FAC ¶ 22.) In November 2008, the replacement windshield cracked while the vehicle was parked overnight in Plaintiff's garage, so Plaintiff paid $225 to replace the second

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[1]The facts are taken from Plaintiff's First Amended Complaint. (Docket No. 4.) The Court also GRANTS BMW's request for judicial notice of Exhibits 1 and 2 of the Kizirian Declaration, which are the relevant express warranty for Plaintiff's MINI and the "Technical Service Bulletin" alleged in the FAC. See Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005) (stating that a court may consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the [plaintiff's] pleading." (brackets in original)).

windshield with a non-MINI windshield. (FAC ¶ 23.)

Many putative class members have reported that their windshields also have cracked or broken for no apparent reason; others reported that even slight impacts would cause windshields to crack. (FAC ¶ 34.) Replacement windshields suffer from the same defect, forcing some class members to replace their windshields multiple times. (FAC ¶ 35.) In the FAC, Plaintiff has quoted several complaints from consumers about cracking windshields, which were posted on the National Highway Traffic Safety Administration ("NTHSA") website. (FAC ¶ 35.)

BMW learned about the cracking defect from sources unavailable to the class, such as through pre-release testing data, early consumer complaints to BMW and dealers, testing done in response to complaints, replacement part sales data, aggregate data from BMW dealers, and other internal sources. (FAC ¶ 37.) Despite its awareness, BMW has actively concealed the existence and nature of the cracking defect at the time Plaintiff and class members purchased their Minis and after, forcing Plaintiff and the class to pay for repair and replacement of cracked windshields. (FAC ¶¶ 38–39.)

BMW has engaged in a "very aggressive marketing campaign" to lure customers to purchase MINIs by promoting safety features, such as airbags, traction and stability control, and strong occupant safety cage construction, in part because the Mini is a small car and has a higher propensity to cause passenger injuries in multiple-vehicle accidents. (FAC ¶¶ 41–45 & n.1.) In the FAC, Plaintiff quotes several statements on BMW's website and marketing materials discussing these safety features, including one statement under a section entitled "Collision Protection" that "each critical section of a MINI

is ingeniously designed to absorb and spread energy in a manner that will keep harms as far away from the passenger as possible" and "what should be increasingly clear is that almost every component of the car helps to protect its Motorers at all times." (FAC ¶¶ 43–45.)

Although Plaintiff does not identify any marketing or other materials that so state, Plaintiff alleges that the windshield is part of a MINI's safety restraint system ("SRS"), playing a "major role in the structural integrity of a vehicle's passenger compartment," so the windshield's propensity to crack poses a safety risk. (FAC ¶¶ 5–7.) For example, if a MINI with a cracked windshield is in a roll-over accident, the windshield can become dislodged, compromising roof-crush resistance. (FAC ¶ 52.) This could cause serious head and neck injuries, failure of the passenger side airbag to deploy, or the ejection of passengers from the vehicle. (FAC ¶ 52.) Moreover, a cracked windshield would not protect passengers from frontal penetration. (FAC ¶ 52.) Plaintiff has not alleged that any class members have actually been injured in these kinds of accidents because the windshield has a propensity to crack.

In order to conceal the cracking defect it knew about prior to selling any MINIs, BMW has instructed dealers to conduct a "pen test." (FAC ¶ 48.) The test involves tracing a windshield crack with pen and if the pen hangs up on the slightest pit or blemish, that is deemed evidence of an impact, and dealers have been instructed to refuse coverage under warranty in that circumstance. (FAC ¶ 49.) According to Plaintiff, the pen test can and does frequently produce false positives, but BMW nevertheless uses it as a reason to deny warranty coverage. (FAC ¶ 48–50.)

Although some class members have paid for four or more

replacement windshields, Plaintiff claims that replaced MINI windshields still do not provide the same level of occupant protection as the factory-installed windshield. (FAC ¶ 51.) For example, the majority of replacements are performed incorrectly. (FAC ¶ 53.) Likewise, the conditions of factory installation are optimal for the seal between the windshield and vehicle, and those conditions cannot be replicated by a replacement. (FAC ¶ 53.) Thus, a replaced windshield cannot provide appropriate support during a roll-over accident or withstand passenger-side airbag deployment, which puts additional stress on the windshield in an accident. (FAC ¶ 53.)

In February 2009, BMW issued a Technical Service Bulletin ("TSB"), which Plaintiff alleges contains evidence that BMW acknowledged the windshield defect, but attempted to attribute the problem to "very isolated circumstances": "Under very isolated circumstances, a stress crack may form due to a combination of glass position and heavy torsional loads on the body of the vehicle. These cracks always start from an outside edge of the glass. Most often the cracks begin at one of the corners of the windshield." (FAC ¶¶ 55–57, 63; Kizirian Decl., Ex. 2.) The TSB directs dealers to replace the windshield and submit the repair order "for a warranty claim where a stress crack is the root cause." (FAC ¶ 56.) The TSB calls for using the pen test to determine whether the crack is due to "outside influence": "Run a non-permanent felt tip pen or small marker over the length of the damaged area. Even very minor surface damage will be felt." (Kizirian Decl., Ex. 2.)

In Plaintiff's view, the purpose of the TSB was two-fold: to make it appear to government regulators, courts, and class members that BMW has taken affirmative steps to resolve the windshield-cracking issue;

and to make it appear that the cracking defect is less extensive than it actually is. (FAC ¶ 57.) Both before and after the TSB, for some vehicles like Plaintiff's that suffered stress cracks beyond the 4-year/50,000 mile MINI New Passenger Car Limited Warranty, or for vehicles with cracks attributed to influences other than stress, BMW allegedly instituted a clandestine program to secretly pay for windshield replacements to mollify customers who complained loudly enough. (FAC ¶ 67.) Plaintiff was not among those consumers who obtained payment from BMW after complaining about replacing his cracked windshields.

Plaintiff alleges that, had class members known about the defective windshields, they would have had the opportunity to factor the existence of the defect into their decisions to purchase MINI vehicles. (FAC ¶ 60.) Class members would have also had the chance to present cracked windshields for warranty repairs. (FAC ¶ 60.)

Plaintiff has alleged four causes of action under California law: (1) violation of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 et seq.; (2) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, based upon a violation of California's Secret Warranty Law, Cal. Civ. Code § 1795.90 et seq.; (3) violation of the UCL for acts other than violating the Secret Warranty Law; and (4) breach of implied warranty under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1792 and 1791.1 et seq.

For the first cause of action, Plaintiff claims that, under the CLRA, the class members are "consumers," and BMW violated California Civil Code section 1770(a)(5) and (7) by representing that the MINI windshields had characteristics and benefits that they did not have

and were of a particular standard and quality when they were not, and by knowingly deceiving the purchasing public with representations that created serious safety risks. (FAC ¶ 91.) Plaintiff also alleges that BMW had a duty to disclose the defective windshields because it was in a superior position to know of the safety defect, it actually knew about the defect, and Plaintiff and the class could not have reasonably discovered the defect until the windshields cracked. (FAC ¶ 93–94.) Plaintiff alleges the windshield defect is material because reasonable consumers would have considered the information important in deciding to purchase a MINI or would have paid a lesser price for a MINI. (FAC ¶ 96.) Class members reasonably expected their windshields to last for the life of their vehicles. (FAC ¶ 97.)

For Plaintiff's second claim under the UCL for an "unlawful" practice of violating the Secret Warranty Law, Plaintiff alleges that a "secret warranty" is created when an automaker establishes a policy to pay for repair of a defect without making either the defect or the repair policy known to the general public. (FAC ¶ 61.) This usually occurs in situations where a large number of consumers complain about a defect not covered by a factory warranty, but the manufacturer decides to offer warranty coverage to individual consumers when they complain. (FAC ¶ 61.) The secret warranty can manifest itself in TSBs issued by a manufacturer to local dealers, instructing dealers on addressing the defect for consumers who complain. (FAC ¶ 61.)

Plaintiff alleges that BWM had a secret warranty because it would replace windshields for customers who complained loudly enough, even though those customers' express warranties had expired or the crack was attributed to something other than stress. (FAC ¶ 67.) Code names for this policy were "good-will adjustments" or "policy

adjustments." (FAC ¶ 67.) As a result, BMW violated the Secret Warranty Law (and the UCL) by failing to notify all consumers of the warranty and by refusing to reimburse consumers for windshield replacement costs. (FAC ¶ 68.)

Plaintiff's non-Secret-Warranty-Act UCL claims rest on his allegations that BMW engaged in unfair competition and engaged in unlawful, unfair, and fraudulent business practices by knowingly concealing the cracking defect when it had a duty to disclose it – a practice capable of deceiving a substantial portion of the purchasing public. (FAC ¶¶ 116–17.)

Finally, Plaintiff's claim under the Song-Beverly Act rests upon his allegations that BMW provided consumers with an implied warranty that MINIs and their parts were merchantable and fit for the ordinary purpose for which they were sold: safe and reliable transportation. (FAC ¶ 127.) That implied warranty was breached by the cracking defect, which rendered the MINIs not reliable, durable, or safe for transportation. (FAC ¶ 127.)

LEGAL STANDARD

The Supreme Court has recently clarified the level of pleading necessary to survive a motion to dismiss under Rule 12(b)(6). See Ashcroft v. Iqbal, __ U.S. __, __, 129 S. Ct. 1937, 1950–52 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557–58 (2007). Federal Rule of Civil Procedure 8(a)(2) requires a "short and plain statement of the claim showing that the pleader is entitled to relief," which does not require "detailed factual allegations," but it "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Iqbal, __ U.S. at __, 129 S. Ct. at 1949. A claim must be "plausible on its face," which means that the Court can "draw the reasonable inference

that the defendant is liable for the mis0conduct alleged." Id.; see Twombly, 550 U.S. at 556, 570. In other words, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotations and alterations omitted). Allegations of fact are taken as true and construed in the light most favorable to the nonmoving party. See 598 F.3d 638, 642 (9th Cir. 2010).

In analyzing the sufficiency of the complaint, the Court must first look at the requirements of the causes of action alleged. See Iqbal, __ U.S. at __, 129 S. Ct. at 1947. The Court may then identify and disregard any legal conclusions, which are not subject to the requirement that the Court must accept as true all of the allegations contained in the complaint. Id. at __, 129 S. Ct. at 1949. The Court must then decide whether well-pleaded factual allegations, when assumed true, "plausibly give rise to an entitlement to relief." Id. at __, 129 S. Ct. at 1950. In doing so, the Court may not consider material beyond the pleadings, but may consider judicially noticeable documents, documents attached to the complaint, or documents to which the complaint refers extensively or which form the basis of the plaintiff's claims in the complaint. See United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

DISCUSSION

A. Duty to Disclose under the UCL and CLRA

The CLRA prohibits certain acts that are "unfair" or "deceptive," including:

> (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities

> which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.
>
> . . .
>
> (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

Cal. Civ. Code § 1770(a)(5) & (7). The UCL similarly prohibits "fraudulent" business practices. Cal. Civ. Code § 17200.

In a fraudulent omissions case like this one,[2] a plaintiff can state a cause of action when the "'omission [is] contrary to a representation actually made by the defendant, or an omission of a fact the defendant was obligated to disclose.'" Falk v. Gen. Motors Corp., 496 F. Supp. 2d 1088, 1094–95 (N.D. Cal. 2007) (brackets in original). The plaintiff may allege an "obligation to disclose" a defect in one of four ways: "(1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant has exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts." Id. at 1095. Plaintiff does not allege a fiduciary relationship with BMW or argue that BMW made only partial representations about windshields. Therefore, the Court focuses on the second and third grounds to determine whether a duty to disclose exists.

In an omissions case, omitted information is material if a

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[2]Plaintiff does not say so explicitly, but the Court interprets his fraud-based UCL and CLRA allegations as claiming fraudulent omissions, which rest on BMW's failure to disclose the cracking defect.

plaintiff can allege that, "had the omitted information been disclosed, one would have been aware of it and behaved differently." Mirkin v. Wasserman, 5 Cal. 4th 1082, 1093 (1993); see also Falk, 496 F. Supp. 2d at 1095 (same). Materiality is viewed from the prospective of the reasonable consumer. Falk, 496 F. Supp. 2d at 1095.

BMW argues that materiality cannot exist in this case because Plaintiff's defective windshield cracked after the expiration of the express warranty on his MINI. See Clemens v. Daimlerchrysler Corp., 534 F.3d 1017, 1026–27 (9th Cir. 2008); Daugherty v. Am. Honda Motor Co., 144 Cal. App. 4th 824, 834–39 (Ct. App. 2006); see also Bardin v. Daimlercrysler Corp., 136 Cal. App. 4th 1255, 1276 (Ct. App. 2006). In Daugherty, the plaintiffs sued an automobile manufacturer for failing to disclose an engine defect that did not cause malfunctions in vehicles until after an express warranty expired. 144 Cal. App. 4th at 827. The court sustained the defendant's demurrer to the plaintiffs' CLRA claims because the plaintiffs failed to identify "any representation by Honda that its automobiles had any characteristic they do not have, or are of a standard or quality they are not." Id. at 834. The plaintiffs were obligated to allege "suppression of a fact by one who is bound to disclose it or who gives information of other facts which are likely to mislead for want of communication of that fact," Bardin, 136 Cal. App. 4th at 1276, which they failed to do in light of the engine's performance during the express warranty period, Daugherty, 144 Cal. App. 4th at 836. In light of the express warranty, "[t]he only expectation buyers could have had about the F22 engine was that it would function properly for the length of Honda's express warranty, and it did. Honda did nothing that was likely to

deceive the general public by failing to disclose that its F22 engine might, in the fullness of time, eventually dislodge the front balancer shaft oil seal and cause an oil leak." Id. at 838.

Similarly, in Clemens, the plaintiff sued an automaker for defective head gaskets in certain vehicles, claiming that the defendant concealed the defect during an express warranty period. 534 F.3d at 1021. The Ninth Circuit affirmed summary judgment for the defendant on the plaintiff's fraud claims under the UCL based on Bardin and Daugherty, explaining that California courts have viewed post-warranty fraudulent concealment claims with "some skepticism." Id. at 1026. The court found that the plaintiff "produced no evidence to suggest that a reasonable consumer would have expected or assumed any particular head gasket lifespan in excess of the warranty period" and the evidence in the record did not establish that the warranty period for the gasket was material to the plaintiff's own purchasing decision. Id.

Plaintiff points out that Clemens, Daugherty, and Bardin did not involve alleged safety defects, which Plaintiff argues are material facts that can, in fact, create a duty to disclose, even when a defect does not occur until after an express warranty expires. For example, in Daugherty, the court took care to note that the case did not involve a defect that created an "unreasonable risk" to the safety of consumers, and suggested that a safety-based duty to disclose might exist in some circumstances: "The complaint is devoid of factual allegations showing any instance of physical injury or any safety concerns posed by the defect." 144 Cal. App. 4th at 836; see also Bardin, 136 Cal. App. 4th at 1270 (noting that plaintiffs "did not allege any personal injury or safety concerns related to" the alleged

defect).[3]

The district court in Falk interpreted this language in Daugherty to provide the safety exception on which Plaintiff relies. 496 F. Supp. 2d at 1094. In Falk, the plaintiffs brought both CLRA and UCL fraudulent omissions claims, alleging that the speedometers in the defendant's vehicles ceased to function properly after the vehicles' express warranty expired. Id. at 1092. The court explained that "Daugherty emphasized that an 'unreasonable' safety risk would lead to a duty to disclose" and concluded that a duty to disclose existed under the circumstances. Id. at 1094. The court refused to dismiss the CLRA claim based upon Daugherty and Bardin, finding instead a duty to disclose because the plaintiffs alleged that the faulty speedometers could cause vehicles to travel at "unsafe speeds" and could cause accidents. Id. at 1096 & n.*. Those allegations constituted material facts and distinguished the case from Daugherty, where no safety issues were alleged. Id. The court also refused to dismiss the UCL fraud claim for the same reason. Id. at 1098.[4]

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[3]Counsel for BMW was also counsel for Honda in Daugherty and he notes that the issue of safety was not pled or argued in the trial court, and was raised only in a reply brief on appeal, prompting the court at oral argument to decline to consider the issue. Even if true, the written and published opinion in Daugherty left open the possibility of a safety exception.

[4]Other courts have recognized the safety exception in Daugherty. See, e.g., Marsikian v. Mercedes Benz USA, LLC, No. CV 08-4876 AHM (JTLx), 2009 U.S. Dist. LEXIS 117012, at *13–17 (C.D. Cal. May 4, 2009); In re OnStar Contract Litig., 600 F. Supp. 2d 861, 869–70 (E.D. Mich. 2009); Oestreicher v. Alienware Corp., 544 F. Supp. 2d 964, 969–73 (N.D. Cal. 2008) (recognizing safety exception and finding defect was not safety-related), aff'd 322 F. App'x 489 (9th Cir. 2009). The Court declines to follow the non-precedential decision in Larsen v. Nissan N. Am., No. A121838, 2009 WL 1766797, at *4 (Cal. Ct. App. June 23, 2009), which rejected in a brief footnote the plaintiffs' belatedly raised argument that their conclusory

Consistent with Falk and Daugherty, the Court concludes that a safety-based exception exists that might create a duty to disclose a defect even after the period of an express warranty expires[5] and Plaintiff has sufficiently alleged that the defective windshields in the MINIs create an unreasonable safety risk that would be material to a reasonable consumer. Plaintiff alleges that each MINI's windshield is part of the vehicle's safety restraint system and if a MINI with a cracked windshield is in a roll-over accident, the windshield can become dislodged, compromising roof-crush resistance and causing serious head and neck injuries, failure of the passenger side airbag to deploy, or the ejection of passengers from the vehicle.[6] Moreover, replacement windshields are expensive for the average consumer, and Plaintiff adequately alleges that a reasonable consumer would have paid less for a MINI or not bought it at all, if the consumer had known that the windshield was defective.

BMW points out that Plaintiff has not alleged that the defective windshields have actually caused injuries in any rollover accidents, relying on Tietsworth v. Sears, Roebuck & Co., __ F. Supp. 2d __, __, No. 5:09-CV-288 JF (HRL), 2010 WL 1268093, at *7 (N.D. Cal. March 31, 2010). BMW further speculates that injuries would not occur unless an owner makes a conscious decision to drive a MINI with a cracked

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allegations of a safety risk created a duty to disclose under the CLRA.

[5]Although Falk was decided before Clemens, Clemens did not mention or discuss a potential safety exception under the UCL, the only statute at issue in that case, so the Court does not view Clemens as disapproving of Falk's analysis of Daugherty.

[6]The Court declines to consider BMW's conclusory argument, raised in a footnote in its opening brief and abandoned in its reply, that Plaintiff should have reported any safety defects to NHTSA.

windshield and then gets into a rollover accident.

The Court is not persuaded by Tietsworth or BMW's arguments that Plaintiff must plead that consumers have been injured by the alleged unreasonable safety risk. Tietsworth approached the safety defect issue in terms of actual injury to the named plaintiffs, finding that they "lacked standing" to pursue their claims based on merely posited injuries. Id. Here, Plaintiff has alleged that he was injured by the defective windshields by having to replace the cracked windshield in his MINIs twice; BMW has not argued that he lacks standing to pursue those claims. The alleged unreasonable risk of safety created by compromised windshields during rollover accidents is relevant to the materiality of BMW's omissions, and Plaintiff has alleged a plausible unreasonable safety risk that would have been material to the reasonable consumer. See, e.g., Marsikian v. Mercedes Benz USA, LLC, No. CV 08-4876 AHM (JTLx), 2009 U.S. Dist. LEXIS 117012, at *16–17 (C.D. Cal. May 4, 2009) (refusing to dismiss CLRA claim based on allegations of a "plausible prospect of a safety problem" in a defective air intake system, as well as the "monetary cost and inconvenience of water damage in the car," which would have been material to a reasonable consumer's decision to buy a car at the prices offered). Taking Plaintiff's allegations as true, he has sufficiently pled a plausible claim that the defect creates unreasonable safety risks.

Moreover, Plaintiff has adequately alleged that the defect was within BMW's exclusive knowledge. Plaintiff alleges that, since 2001, BMW has learned about the cracking defect from sources unavailable to the class, such as through pre-release testing data, early consumer complaints to BMW and dealers, testing done in response to complaints,

replacement part sales data, aggregate data from BMW dealers, and other internal sources. Despite its awareness, BMW did not disclose the existence and nature of the cracking defect at the time Plaintiff and class members purchased their Minis, forcing Plaintiff and the class to pay for repair and replacement of cracked windshields. These allegations are nearly identical to those in Falk, which the court found adequately pled exclusive knowledge. See Falk, 496 F. Supp. 2d at 1096–97 ("aggregate data from dealers," "pre-release testing data," and customer complaints, all within the defendant's exclusive knowledge, were sufficient).

Finally, Plaintiff has adequately alleged that BMW actively concealed the windshield defect.[7] For example, Plaintiff alleges that BMW withheld information about the defect it had learned through internal sources and customer complaints (FAC ¶¶ 38–40), that it replaced defective windshields only for the most vocal customers without disclosing the replacement program to all consumers and concealing the program by calling the replacements "goodwill" adjustments (FAC ¶¶ 61–71), and that it used the "pen test" to determine replacements, even though the test frequently produced false positive results (FAC ¶¶ 48–50). This is more than enough to allege active concealment that would create a duty to disclose. See Falk, 496 F. Supp. 2d at 1097 (finding that plaintiffs sufficiently pled active concealment by alleging that manufacturer did not notify consumers of defect in light of complaints and replaced defective parts with other defective parts in order to conceal defects); see

[7]Although Plaintiff identifies the "active concealment" theory as creating a duty for BMW to disclose the defect, BMW does not appear to attack the sufficiency of the FAC on this basis.

also Marsikian, 2009 U.S. Dist. LEXIS 117012, at *14 (finding sufficient to state a claim for active concealment allegations that internal service bulletins, "goodwill" adjustments given to the most vocal owners, and temporary fixes concealed the defect from the general customer base).

Thus, the Court finds that Plaintiff has sufficiently alleged a duty to disclose the cracking defect and BMW's motion to dismiss Plaintiff's fraud-based CLRA and UCL claims on this ground is DENIED.

B. Actual Reliance under the CLRA and UCL

For fraud-based claims under the CLRA and UCL, Plaintiff must also plead actual reliance. See In re Tobacco II Cases, 46 Cal. 4th 298, 326 (2009) (fraud claims under UCL); Buckland v. Threshold Enters., 155 Cal. App. 4th 798, 810 (Ct. App. 2007) (CLRA claims "sounding in fraud"). Actual reliance is presumed (or at least inferred) when the omission is material. Tobacco II, 46 Cal. 4th at 327. As discussed above, Plaintiff has sufficiently alleged that the windshield cracking defect would have been material to a reasonable consumer looking to purchase a MINI. See Falk, 496 F. Supp. 2d at 1095. Thus, the Court may reasonably infer Plaintiff's and class members' actual reliance on the omission of that material information.

BMW nevertheless argues that Plaintiff cannot establish materiality sufficient to establish actual reliance on BMW's omissions because he has not alleged that, "had the omitted information been disclosed, [he] would have been aware of it and behaved differently." Mirkin, 5 Cal. 4th at 1093 (emphasis added). Plaintiff does not allege that, before he bought his MINI, he reviewed any brochure, website, or promotional material that might have contained a disclosure of the cracking defect. Plaintiff does not respond to this

point in his brief.

Given the alleged importance of the cracking defect, had BMW chosen to disclose it to prospective buyers, presumably Plaintiff, as a member of the buying public, would have become aware of the defect in the course of making his purchasing decision. Nevertheless, the Court agrees with BMW that the FAC is devoid of allegations that Plaintiff would have plausibly been aware of the cracking defect before he purchased his MINI had BMW publicized this information. See Sanchez v. Wal Mart Stores, No. 06-CV-2573 JAM-KJM, 2009 U.S. Dist. LEXIS 89057, at *6–7 (E.D. Cal. Sept. 11, 2009) (finding no materiality because, inter alia, plaintiff did not prove she would have been aware of any missing warning that might have been placed on product). The Court GRANTS BMW's motion to dismiss the fraud-based CLRA and UCL claims on this ground, but GRANTS Plaintiff leave to amend his Complaint to satisfy this pleading failure.

C. UCL "Unlawful" Claim Based Upon Secret Warranty Law

Plaintiff alleges an "unlawful" practices claim under the UCL based upon violation of California's Secret Warranty Law, California Civil Code section 1795.90 et seq. The Secret Warranty Law regulates "Adjustment Programs," defined as

> any program or policy that expands or extends the consumer's warranty beyond its stated limit or under which a manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance, other than service provided under a safety or emission-related recall campaign. "Adjustment program" does not include ad hoc adjustments made by a manufacturer on a case-by-case basis.

Cal. Civ. Code § 1795.90(d). The Secret Warranty Law requires a manufacturer to, "within 90 days of the adoption of an adjustment program, subject to priority for safety or emission-related recalls, notify by first-class mail all owners or lessees of motor vehicles eligible under the program of the condition giving rise to and the principal terms and conditions of the program." Cal. Civ. Code § 1795.92(a).

BMW argues that the TSB conclusively demonstrates that, instead of instituting a secret warranty for defective windshields, BMW engaged in the type of "ad hoc adjustments made by a manufacturer on a case-by-case basis" permitted by statute. However, that determination cannot possibly be made on a motion to dismiss because it rests on the parties' conflicting interpretations of Plaintiff's allegations. BMW contends that the TSB merely reaffirmed that a stress crack, which can arise in "very isolated circumstances," was covered under the original warranty and any other kind of crack was not. However, Plaintiff sufficiently alleges that BMW violated the Secret Warranty Law by instituting a "clandestine program to secretly pay for the cost of replacing or repairing" cracked windshields for some customers even if the crack was not stress-related and even if the cracks occurred outside of the New Car Warranty for those customers who were the most vocal and persistent, using code names for the repairs like "goodwill" or "policy adjustments." (FAC ¶ 14-15, 67.) Crediting those allegations, Plaintiff has readily stated a claim for a violation of the Secret Warranty Law. See Marsikian, 2009 U.S. Dist. LEXIS 117012, at *18–19 (finding plaintiff stated Secret Warranty Law violation by alleging that defendant sent out temporary service bulletin that it would provide temporary fixes for a defect only to the most vocal

customers without notifying plaintiffs and other owners). Thus, Plaintiff has stated an "unlawful" practices UCL claim based upon violations of the Secret Warranty Law.[8]

D. Song-Beverly Act

The Song-Beverly Act provides in pertinent part: "Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. The retail seller shall have the right of indemnity against the manufacturer in the amount of any liability under this section." Cal. Civ. Code § 1792. In general, the warranty of merchantability ensures that goods are fit "'for the ordinary purpose for which such goods are used.'" Mexia v. Rinker Boat Co., 174 Cal. App. 4th 1297, 1303 (Ct. App. 2009). While the Song-Beverly Act is similar to the California Commercial Code, the Song-Beverly Act was intended to "provide greater protections and remedies for consumers" than the Commercial Code. Id. Thus, "[t]o 'the extent that the [Song-Beverly] Act gives rights to the buyers of consumers goods, it prevails over conflicting provisions of the Uniform Commercial Code.'" Id. at 1304 (second brackets in original).

BMW moves to dismiss Plaintiff's Song-Beverly Act claim on two grounds: (1) Plaintiff cannot allege vertical privity, which is required for a Song-Beverly Act claim; and (2) if BMW did breach any implied warranty under the Song-Beverly Act, that breach occurred both

[8]Plaintiff also argues that he stated a claim under the "unfair" clause in the UCL. BMW does not attack the FAC on this basis and the Court declines to address the issue.

after any implied or express warranty expired and after the statute of limitations expired.

1. Vertical Privity

Under the California Commercial Code section 2314, which imposes an implied warranty of merchantability in any sale of goods, vertical privity between a consumer and manufacturer is required. See Clemens, 534 F.3d at 1023 (holding that, under section 2314, "a plaintiff asserting breach of warranty claims must stand in vertical contractual privity with the defendant."). However, the Court agrees with Plaintiff and the weight of authority that the plain language of section 1792 of the Song-Beverly Act does not impose a similar vertical privity requirement. See Nvidia GPU Litig., No. 08-4312 JW, 2009 WL 4020104, at *4 & n.7 (N.D. Cal. Nov. 19, 2009) (noting split in case law and finding no privity requirement); Gonzalez v. Drew Indus., No. CV 06-8233 DDP (JWJx), 2007 U.S. Dist. LEXIS 35952, at *32—33 (C.D. Cal. May 10, 2007) (finding no privity requirement based on plain language of statute); Gusse v. Damon Corp., 470 F. Supp. 2d 1110, 1116 n.9 (C.D. Cal. 2007) (finding that privity requirement "ignores the plain language of the Song-Beverly Act" that all goods sold at retail must be accompanied by the manufacturer's implied warranty); 4 B.E. Witkin, Summary of California Law § 98 (10th ed. 2005) (explaining that the Song-Beverly Act "eliminates the requirement of privity between the buyer and the manufacturer or distributor, by implying warranties in retail sales of consumer goods

unless disclaimed.").[9] The Court DENIES BMW's motion to dismiss Plaintiff's Song-Beverly Act claim on this basis.

2. Breach During Implied Warranty Period

The Song-Beverly Act limits the time period for the duration of the implied warranty of merchantability:

> The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable; but in no event shall such implied warranty have a duration of less than 60 days nor more than one year following the sale of new consumer goods to a retail buyer. Where no duration for an express warranty is stated with respect to consumer goods, or parts thereof, the duration of the implied warranty shall be the maximum period prescribed above.

Cal. Civ. Code § 1791.1(c). Because BMW's express warranty on Plaintiff's MINI extended for longer than one year, the maximum duration of one year applies under section 1791.1.

BMW relies on this provision to argue that Plaintiff's implied warranty claim under the Song-Beverly Act is barred. It claims that the one-year duration for any implied warranty section 1791.1 expired in December 2006, one year after Plaintiff purchased his MINI, even though the cracking defect did not manifest until over three years after his purchase. To rebut this argument, Plaintiff relies on Mexia v. Rinker Boat Co., 174 Cal. App. 4th 1297, 1305–06 (Ct. App. 2009). In Mexia, the plaintiff brought a claim for breach of the implied warranty of merchantability under the Song-Beverly Act for a boat he

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[9]The courts that have implied a vertical privity requirement have done so without reference to the statutory language, which this Court views as dispositive of the matter. See Tietsworth, 2010 WL 1268093, at *14; In re Whirlpool Corp. Front-Loading Washer Prods. Liability Litig., 684 F. Supp. 2d 942, 956 (N.D. Ohio 2009).

purchased that contained a latent defect causing its engine to corrode. Id. at 1301. The plaintiff had purchased the boat on April 12, 2003, and the alleged defect arose in July 2005. Id. at 1301–02. The plaintiff took it an authorized boat dealer for repairs, but the condition persisted and the plaintiff sued on November 27, 2006, for a violation of the Song-Beverly Act. Id. at 1302.

Citing the statute, the defendants argued that the plaintiff's latent defect claim expired one year after purchase, even though the defect manifested itself two years after purchase. Id. at 1308. The court concluded at the demurrer stage that the plaintiff's warranty claim over the alleged latent defect was not barred by the one-year duration provision in the Song-Beverly Act. "The implied warranty of merchantability may be breached by a latent defect undiscoverable at the time of sale," so "[i]n the case of a latent defect, a product is rendered unmerchantable, and the warranty of merchantability is breached, by the existence of the unseen defect, not by its subsequent discovery." Id. at 1304–05.

The court first rejected the argument because it "ignores the distinction between unmerchantability caused by a latent defect and the subsequent discovery of the defect; the fact that the alleged defect resulted in destructive corrosion two years after the sale of the boat does not necessarily mean that the defect did not exist at the time of the sale." Id. While the failure to seek repairs on the boat for two years might suggest it was merchantable at the time of the sale and the corrosion was only a later maintenance issue, the court assumed the plaintiff's allegations that the defect existed during the one-year period after purchase were true. Id.

The court then squarely rejected the defendants' primary argument that the duration provision "precludes an action for breach of the implied warranty of merchantability under the Song-Beverly Act when the action is based upon a latent condition that is not discovered by the consumer and reported to the seller within the duration period." Id. at 1308–09. The court found no support in the text of the duration provision that would require discovery of a latent defect during the maximum one-year period of the implied warranty, and indeed, importing a discovery requirement "would create a notification deadline that would apply even if the consumer has not discovered or could not have discovered the breach within the duration period." Id. at 1310 (emphasis in original).

The court reasoned that the defendants' interpretation would provide fewer rights for purchasers than the protections in the Commercial Code, which requires a buyer to notify a seller of a defect within a "reasonable time," but "only after the point the purchaser knew or should have known of the breach." Id. (emphasis removed). While the court was sympathetic to the defendants' arguments that this interpretation could very well place a significant "burden and expense on small businesses in defending implied warranty claims years after the sale," it found that was a concern better addressed by the legislature, and not the court. Id. at 1311.

BMW cites Hovsepian v. Apple, Inc., No. 08-5788 JF (PVT), 2009 WL 2591445, at *6–8 (N.D. Cal. Aug. 21, 2009), to argue that the Court should not follow Mexia's analysis. In Hovsepian, the plaintiffs brought claims for breach of implied warranty under the California Uniform Commercial Code when their computer screens malfunctioned after the expiration of a one-year express warranty. Id. at *1. They

had not pled claims under the Song-Beverly Act, and the court addressed Mexia in dicta in a footnote. Id. at *8 n.7. The court explained that the "Mexia decision appears to be contrary to established California case law with respect to the duration of the implied warranty of merchantability as set forth in § 1791.1 of the Song-Beverly Act." Id. (citing Atkinson v. Elk Corp., 142 Cal. App. 4th 212, 230 (Ct. App. 2006)).[10] The court expressed skepticism of Mexia's holding because "any component failure could be characterized as having been caused by a latent defect, and thus if Mexia were read broadly the time limitation imposed by § 1791.1 would be meaningless." Id. Nevertheless, the court distinguished Mexia on its facts because, in that case, "the court appeared to discuss latent defects that rendered the product unmerchantable from the outset," whereas in Hovsepian, the plaintiffs admitted that their computer screens worked properly for more than a year. Id.[11] Other federal district courts have suggested Mexia's holding was anomalous, though none has expressly rejected it. See, e.g., Tietsworth v. Sears, Roebuck & Co., No. 5:09-CV-288 JF (HRL), 2009 WL 3320486, at *12 (N.D. Cal. Oct. 13, 2009) (calling Mexia "something of an outlier," but ruling on different grounds); Butler v. Sears, Roebuck & Co., No. 06 C 7023,

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[10]In Atkinson, the court concluded that the one-year duration provision in section 1791.1 applied to claims under the federal Magnuson-Moss Warranty Act. 142 Cal. App. 4th at 230–31. It then found that a defect in roofing shingles arising six years after installation did not support a breach of implied warranty claim because the defect occurred beyond the one-year limit in section 1791.1. Id. at 231. However, there is no indication that the plaintiff in Atkinson alleged that a latent defect existed at the time of installation.

[11]The Court also cited the unpublished California appellate decision in Larsen, which the Court declines to follow both because it is non-precedential and did not cite or discuss Mexia.

2009 WL 3713687, at *3 n.4 (N.D. Ill. Nov. 4, 2009) (noting decision in Mexia and Hovsepian without addressing issue).

The Court will follow Mexia, rather than Hovsepian, to find that Plaintiff can pursue his Song-Beverly Act claim. Mexia directly addressed and rejected the precise argument BMW makes here, holding that, so long as a latent defect existed within the one-year period, its subsequent discovery beyond that time did not defeat an implied warranty claim. 174 Cal. App. 4th at 1310–11. Hovsepian, in contrast, only addressed the issue in dicta in a footnote and involved a defect that the plaintiffs had not alleged existed at the time of purchase. The Court must "defer to the California Court of Appeal's interpretation of [a state statute] unless there is convincing evidence that the California Supreme Court would decide the matter differently." Cal. Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1099 (9th Cir. 2003). Hovsepian is not "convincing evidence" that Mexia would be rejected by the California Supreme Court.

BMW also tries to distinguish Mexia on its facts, arguing that the plaintiff in that case alleged a latent defect that existed within the one-year time limit, whereas here, Plaintiff cannot claim that his MINI was not merchantable when he bought it because it provided safe and reliable transportation for over three years. However, Plaintiff has alleged a latent defect in the windshield existed at the time he purchased his MINI, and that the defect eventually caused the windshield to crack over three years after his purchase. As Mexia held, the fact that the alleged defect resulted in a cracked windshield three years after the sale of the MINI "does not necessarily mean that the defect did not exist at the time of sale." 174 Cal. App. 4th at 1308. Plaintiff has therefore adequately alleged

a breach of the implied warranty that satisfies the one-year time period of section 1791.1.[12]

BMW argues that Plaintiff's claim is nevertheless barred by the four-year limitations period, which it claims began to run when Plaintiff purchased his MINI in December 2004, but expired in December 2008, long before Plaintiff filed suit in February 2010. California courts have applied the four-year statute of limitations in California Commercial Code section 2725 to Song-Beverly Act claims. See Mexia, 174 Cal. App. 4th at 1305–06. Commercial Code section 2725 states in relevant part:

> (1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. . . .
>
> (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

Cal. Comm. Code § 2725(1), (2).

BMW's argument fails because it ignores the existence of the 4-year/50,000-mile express warranty, which is a warranty that "explicitly extends to future performance of the goods." That warranty tolled the statute of limitations until Plaintiff reasonably

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[12]BMW cites American Suzuki Motor Corp. v. Superior Court, 37 Cal. App. 4th 1291, 1298 (Ct. App. 1995) to suggest that Plaintiff's MINI was fit for its ordinary purpose, but that case is distinguishable because few class members in that case had ever experienced any damage due to an alleged design defect in the vehicles at issue; Plaintiff here alleges that he and many class members experienced cracked windshields due to the windshield defect, albeit after the express warranty expired.

knew that his MINI would not perform as it should, which did not occur until his windshield cracked and BMW would not replace it. Krieger v. Nick Alexander Imports, Inc., 234 Cal. App. 3d 205, 215–17 (Ct. App. 1991). The statute of limitations for Plaintiff's breach of implied warranty claim thus began running in March 2008, when he first discovered that BMW would not repair his defective windshield. (FAC ¶¶ 21–22.) His complaint, filed only two years later, was therefore timely. Thus, the Court DENIES BMW's motion to dismiss Plaintiff's Song-Beverly Act claim.[13]

CONCLUSION

BMW's motion to dismiss is DENIED in all respects, except that the Court DISMISSES WITHOUT PREJUDICE Plaintiff's fraud-based UCL and CLRA claims for his failure to plead actual reliance. He is GRANTED LEAVE TO AMEND his complaint to remedy that defect, but any amended complaint must be filed **no later than 20 days from the filing of this Order. Failure to do so will result in dismissal of his fraud-based CLRA and UCL claims WITH PREJUDICE.**

IT IS SO ORDERED.

DATED: August 11, 2010

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

[13]As a result, the Court need not address Plaintiff's argument that his second defective windshield nevertheless saves his implied warranty claims by satisfying the one-year duration requirement and the statute of limitations.

Exhibit 5

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CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-04876 AHM (JTLx)	Date	May 4, 2009
Title	ARUTYUN MARSIKIAN, *et al.* v. MERCEDES BENZ USA, LLC, *et al.*		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE	
Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys **NOT** Present for Plaintiffs: Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

I. INTRODUCTION

Plaintiffs Arutyun Marskian and Payam Saadat filed this putative class action on behalf of themselves and similarly situated California consumers, alleging that Defendant Mercedes-Benz USA, LLC failed to disclose a defect in the air intake system in two classes of Mercedes-Benz vehicles in violation of California law. Upon stipulation, they filed a First Amended Complaint and a Second Amended Complaint. The Second Amended Complaint asserts six claims for relief for (1) violation of the Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*; (2) violation of Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"), based on a violation of the California Secret Warranty Law, Cal. Civ. Code § 1795.90 *et seq.* (3) unfair business practices under the UCL; (4) unjust enrichment; (5) fraud by omission; and (6) breach of express warranty. Plaintiffs seek various forms of monetary and injunctive relief.

Before this Court is Defendant's motion to dismiss the Second Amended Complaint ("SAC"). For the reasons stated below, the Court GRANTS IN PART AND DENIES IN PART the motion.[1] The Court grants the motion as to the express warranty claim for a technical, curable reason, and the unjust enrichment claim, and denies the motion as to the other claims.

II. PLAINTIFFS' ALLEGATIONS

[1]Docket No. 29.

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Plaintiffs allege that Defendant manufactured and subsequently sold and leased to California consumers Mercedes-Benz S-Class W-220 and W-215 vehicles ("Class Vehicles") from the 2001 to 2006 model years knowing that they contained a defective Air Intake System ("AIS"). The AIS is part of the vehicle's climate control system; it obtains fresh air from outside the vehicle. It is shaped like a box. There is a grate on the top that is designed to prevent leaves and other objects from entering the box. At the bottom of the box there is a reed valve that serves as a drain. SAC ¶ 33. The grate on the top of the vehicle is not fine enough to prevent some leaves, twigs and other objects from entering the box, yet the reed valve is more restrictive. Thus, the reed valve is susceptible to clogging, which then causes the AIS to fill with water when it is raining or when the vehicle is washed. When this occurs, many vehicles have suffered substantial electrical failure due to water damaging the computer, electrical system, and other components. *Id.* ¶ 34.

The defectively designed AIS is a safety hazard because the flooding of the AIS with water while the vehicle is in operation may cause catastrophic engine and electrical system failure, which in turn may cause traffic accidents. *Id.* ¶ 3. It also results in substantial out-of-pocket costs to Class Members who have to repair or replace the water damaged components. *Id.* ¶ 4.

Defendant knew or should have known that the AIS installed on the Class Vehicles is defective and would fail prematurely. *Id.* ¶ 5. Since 2001, Defendant did know about the defective AIS as a result of its own internal testing, customer complaints, dealership repair orders, as well as various other sources. SAC ¶¶ 34-36. It actively concealed and failed to disclose the defect to Plaintiffs and Class Members at the time of purchase or lease and thereafter. *Id.* ¶¶ 5-6.

On or about March 2001 and again in 2005 Defendant issued -- but only to its own dealers -- internal bulletins acknowledging the defect. Defendant recommended an alternative design and advised its dealers to offer what amounted to a one-time temporary fix. Defendant instructed dealers to offer to clear the reed valve for some Class Vehicles and only for those customers who made a service visit to the dealerships. SAC ¶¶ 6, 10, 37, 49-50. In addition, MBZ also implemented a policy of offering to replace the AIS or repair the defect-related damage of only those consumers who complained loudly enough. *Id.* ¶¶ 8, 54. However, MBZ failed to notify Plaintiffs, or any other owner or

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lessee of the Class Vehicles, of these available fixes for the AIS and has refused to reimburse Plaintiffs and Class Members for their repair costs. *Id.* ¶¶ 8, 57-59.

Moreover, MBZ knew that the valve clearing would not even fix the AIS defect. Nonetheless, MBZ devised the valve clearing policy to prolong the amount of time that would elapse before the AIS failed and to ensure that when the AIS fails it would be outside of warranty, so that Defendant can shift the financial responsibility for the AIS defect onto customers. SAC ¶¶ 7, 9, 12-18.

Plaintiffs and Class Members have a reasonable expectation that the AIS would function properly for the life of the vehicle. SAC ¶ 83. A reasonable consumer would have considered the undisclosed defect to be important in deciding whether to purchase the vehicles. Had Plaintiffs and Class Members known the defective nature of the AIS, they would not have purchased them or would have paid less for them. *Id.* ¶ 82.

III. STANDARDS GOVERNING RULE 12(b)(6) MOTIONS

On a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim, the allegations of the complaint must be accepted as true and are to be construed in the light most favorable to the nonmoving party. *Wyler Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the complaint. Thus, if the complaint states a claim under any legal theory, even if the plaintiff erroneously relies on a different legal theory, the complaint should not be dismissed. *Haddock v. Bd. of Dental Examiners*, 777 F.2d 462, 464 (9th Cir. 1985).

Federal Rule of Civil Procedure 8(a)(2) requires

> only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests[.]" . . . While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . ., a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and

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> conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . . Factual allegations must be enough to raise a right to relief above the speculative level . . . .

Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007) (internal citations omitted).

Fed. R. Civ. P. 9(b) imposes a heightened pleading standard for claims of fraud. Rule 9(b) provides: "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Rule 9(b) "ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *See Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1986); *Schreiber Dist. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1400 (9th Cir. 1986). In order to comply with Rule 9(b), the pleader must allege the "time, place and specific content of the false representations as well as the identities of the parties to the misrepresentation." *See Schreiber*, 806 F.2d at 1401. In addition, the pleader must explain why the alleged statement or omission was false or misleading *when made*. *See In re Glenfed Inc. Securities Litig.*, 42 F.3d 1541, 1548-49 (9th Cir. 1994) (*en banc*).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion. . . . However, material which is properly submitted as part of the complaint may be considered" on a motion to dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss without converting the motion to dismiss into a motion for summary judgment. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). If the documents are not physically attached to the complaint, they may be considered if their "authenticity . . . is not contested" and "the plaintiff's complaint necessarily relies" on them. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998). Furthermore, under Fed. R. Evid. 201, a court may take judicial notice of "matters of public record." *Mack v. South Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th

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Cir. 1986), *abrogated on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).. "The district court will not accept as true pleading allegations that are contradicted by facts that can be judicially noticed or by other allegations or exhibits attached to or incorporated in the pleading." 5C Wright & Miller, *Fed. Prac. & Pro.* § 1363 (3d ed. 2004).

Where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by any amendment. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (citation omitted).

IV. DISCUSSION

Defendant seeks dismissal of the express warranty, CLRA, Secret Warranty Law, and UCL claims for legally insufficient pleading. Defendant also argues that preemption bars the remedy of court-ordered notification and recall and that the doctrine of primary jurisdiction requires a stay and referral of the alleged safety problem to the National Highway Traffic Safety Administration. The Court addresses each of Defendant's arguments in turn.

A. Express Warranty Claim

Defendant argues that Plaintiffs' claim for breach of express warranty is insufficient because they failed to allege the specific written terms on which they base the claim. Although the pleading is arguably deficient in that respect, Plaintiff's omission did not deprive Defendant of actual notice of the basis for the claim. Defendant knows (and Plaintiffs have confirmed) the language in the warranty that is the basis for the claim: the provision on page 13 of the respective warranty documents for the two classes of cars, under the heading "Items Which Are Covered," that says "defects in material or workmanship arising during the warranty period." *See* Mot. at 6; Declaration of [defense counsel] Derek S. Whitefield, Ex. 1, p. 13, Ex. 2, p. 13; Opp'n at 25 n. 14.

Defendant then argues that this warranty provision could not be violated because Plaintiffs fail to allege facts showing that the problem is in the material or workmanship. Defendant characterizes the problem with the AIS as "environmental exposure," caused

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by external factors such as leaves and rain. It points to the provision in the warranty that excludes damage from the environment and the provision that states that normal maintenance is the owner's responsibility. *See* Whitefield Decl., Ex. 1, pp. 15-16, Ex. 2, pp. 15-16. The Court rejects these arguments. Plaintiffs have adequately alleged that the AIS flooding problem is caused by both the design of the box (specifically, the design of the grate and reed valve) and exposure to environmental conditions. Design defects fall within the "material and workmanship" provision on its face. Defendant has not argued otherwise. It even concedes on reply that whether there is warranty coverage depends on causal factors, which entails a factual question that cannot be resolved on the pleadings. *See* Reply at 11.

The Court will dismiss the claim in order to allow Plaintiffs to amend their pleading to state the exact language in the warranty giving rise to the claim.

B. The Duty to Disclose

The bulk of the motion is directed at the core question of whether the allegations adequately support a legal duty under California law to disclose the alleged defect. Without a duty to disclose, Plaintiffs cannot maintain a CLRA claim based on nondisclosure. As the parties apparently understand it, the UCL claim, to the extent it is based on a CLRA violation, and the common law fraud claim would also fail if Defendant did not have a duty to disclose.

Plaintiffs' CLRA claim is based on Cal. Civ. Code § 1750(a)(5) and (a)(7), which prohibit:

> (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have. . .
>
> (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

The parties agree that *Bardin v. DaimlerChrysler Corp.*, 126 Cal.App.4th 1255

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(Cal. Ct. App. 2006), *Daugherty v. Am. Honda Motor Co., Inc.*, 144 Cal.App.4th 824 (Cal. Ct. App. 2007), and *Falk v. General Motors Corp.*, 496 F. Supp. 2d 1088 (N.D. Cal. 2007) govern the analysis of the CLRA claim. These cases establish that the CLRA only bans omissions when a duty to disclose exists, and they provide the standards for determining whether a plaintiff has alleged facts demonstrating that an automobile manufacturer had such a duty. *Bardin* involved exhaust manifolds that were made out of a material subject to higher failure rates, while *Daugherty* dealt with a defect in Honda engines that would result in the dislodgment of a front balancer shaft oil seal. In both cases, the appellate courts dismissed the CLRA claim because plaintiffs failed to allege facts showing that the manufacturer had any duty to disclose the alleged defect. *Bardin*, 136 Cal.App.4th at 1276; *Daugherty*, 144 Cal.App.4th at 836. In these two cases, the problems surfaced only after the expiration of the car's warranty. In contrast, *Falk* involved defective speedometers in relatively new cars. Relying on the standards articulated in those two cases, the Northern District of California in *Falk* concluded that the plaintiff in its case had alleged facts to support a duty to disclose.

The parties essentially agree on the standards arising from these cases. As the *Falk* court succinctly put it, "*Bardin* and *Daugherty* allow CLRA claims for certain omissions. . . when the "'omission [is] contrary to a representation actually made by the defendant, or an omission of a fact the defendant was obliged to disclose.'" 496 F. Supp. 2d at 1094 (citing *Daugherty*, 144 Cal.App.4th at 835). As to the second basis for a CLRA claim, the common law provides that a failure to disclose or concealment can constitute actionable fraud in four circumstances:

> (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material fact.

Id. at 1095 (quoting *LiMandri v. Judkins*, 52 Cal.App.4th 326, 337 (Cal. Ct. App. 1997)). An example of a material fact that *Daugherty* emphasized is an unreasonable safety risk. *Daugherty*, 144 Cal.App.4th at 836.

The parties disagree on whether Plaintiffs' allegations state a CLRA nondisclosure

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claim under these standards. Plaintiffs liken their case to *Falk* and distinguish *Bardin* and *Daugherty*. Plaintiffs argue that like the *Falk* plaintiffs, they have sufficiently alleged that Defendant had exclusive knowledge of material facts not known to the plaintiffs and that defendant actively concealed material facts. Defendant dismisses Plaintiffs' attempt to mimic *Falk*, arguing that their allegations are too conclusory. Not so.

Plaintiffs' allegations of knowledge and concealment are plainly sufficient. According to the SAC, Defendant had exclusive knowledge of material facts not known to them, "through its own testing, records of customer complaints, dealership repair orders, as well as various other sources. . . ." SAC ¶ 36. Mercedes-Benz "was in a superior position to know" that the AIS might flood. *Falk*, 496 F. Supp. 2d at 1096-76. Indeed, in 2001 and 2005 Defendant issued internal bulletins to dealers about this problem. It also provided additional services -- good will adjustments or policy adjustments -- to certain owners who complained loudly enough. But it did not inform all owners of affected vehicles. Moreover, even with the 2001 and 2005 service campaign Defendant provided only a temporary fix, thereby concealing the full extent of the problem. These allegations indicate that Defendant knew about the problem, developed measured and selective responses to owners' complaints, but concealed the problem from the general customer base. SAC ¶¶ 5-6, 8, 10, 34-37, 49-50, 54.

Defendant's primary challenge to the sufficiency of the allegations is directed not at allegations of what it knew or did, but at allegations concerning the materiality of the nondisclosure. For undisclosed information to be material, a plaintiff must show that a reasonable consumer aware of the information would have behaved differently. *Falk*, 496 F. Supp. 2d at 1095 (citations omitted). In Defendant's view, the fact that exposure to certain environmental conditions could in some cases lead to clogging of the reed valve and water damage is not material. Defendant dismisses as purely speculative Plaintiff's allegations that the clogging of the reed valve is a safety hazard and that this fact would have affected a reasonable consumer's decision to buy the car. *See* SAC ¶ 3, 82. It emphasizes that Plaintiffs do not allege any specific incidents suggesting that there might be a safety problem; for example, they do not allege that their clogged reed valves caused any safety problems for them. In addition, Defendant disputes Plaintiffs' assertion that it is reasonable for consumers to expect the AIS to function properly for the life of their vehicles, because, it argues, vehicle components such as the climate control system often require maintenance and repair.

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Such contentions are better raised on summary judgment. Plaintiffs' allegations, which must be construed favorably to them, satisfy the applicable pleading standards. *See Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) ("a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and "that a recovery is very remote and unlikely."). Although the safety implications of a flooded climate control system are not as obvious to a lay person as the danger posed by a defective speedometer, *see Falk*, 496 F. Supp. 2d at 1096, it is not implausible that the flooding would cause "catastrophic engine and electrical system failure" while the car is on the road. SAC ¶ 3. Given the plausible prospect of a safety problem, as well as the monetary cost and inconvenience of water damage in the car, Plaintiffs' allegations that the omitted information would have affected a reasonable consumer's willingness to buy the car at the prices offered are also plausible and plainly sufficient. Similarly, it is plausible that a reasonable consumer would expect the AIS, and the entire climate control system, to not fail as a result of a clogged reed valve.

The complaints in *Bargin* and *Daugherty* did not include any safety allegations (the plaintiffs sought only monetary damages based on the cost of repair and replacement). That fact alone distinguishes those cases. As the *Daugherty* court pointed out, without any safety allegations, "the alleged defect posed no unreasonable risk" and hence triggered no duty to disclose. *Daugherty*, 144 Cal.App.4th at 836 (quotation marks and citation omitted). That is not the case here.

Plaintiffs' complaint contains more than mere labels and conclusions. Based on the facts they allege, it would be a reasonable inference to conclude that Defendant had a duty to disclose that the AIS could become clogged and cause flooding, thereby raising their right to relief under the CLRA "above the speculative level." *Bell Atlantic Corp.*, 127 S. Ct. at 1965.

C. Secret Warranty Law Violation

Plaintiffs' second claim for relief alleges a violation of the "unlawful" prong of the UCL, Cal. Bus. & Prof. Code § 17200 *et seq.*, based on a violation of the California Secret Warranty Law. The Secret Warranty Law imposes certain duties on automobile manufacturers, among them the duty to notify consumers of warranty adjustment

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programs.[2] Cal. Civ. Code § 1795.92. It also requires dealers to provide notice to consumers about service bulletins and adjustment programs. *Id.* § 1795.91. Plaintiffs allege that Defendant's policy of providing temporary fixes for clogged reed valves constituted an adjustment of the warranty because maintenance of the reed valve is not included in the original warranty. SAC ¶ 55. They allege also that Defendant extended the warranty even further to the most vocal complainants, under the code names "good will adjustments" or "policy adjustments." *Id.* ¶ 54. Plaintiffs and other owners and lessees were not informed of these adjustment programs and, when they requested a free repair or replacement, they were refused. *Id.* ¶¶ 8, 57-58. Finally, they allege that Defendant, as a dealer, did not comply with the notification provision. *Id.* ¶ 60.

Defendant's arguments concerning the Secret Warranty Law (confined to page 16 of the opening brief) lack merit. It cites no legal authority to support their contention that Plaintiffs' allegations fail to state a violation of the Secret Warranty Law, and some of its characterizations of selective portions of Plaintiff's allegations are misleading, such as that Plaintiffs failed to allege that "they" were denied the available fix. (The SAC alleges that Defendant refused to reimburse Plaintiffs for the costs of repairing the damage and that owners and lessees were denied the fix. SAC ¶¶ 8, 57-59.) Plaintiffs' allegations at SAC ¶¶ 43-61 are sufficient to state an unfair competition claim based on a violation of the Secret Warranty Law.

D. Section 17200 Claim

Defendant's challenge to the unfair business practices claim turns on whether the allegations support a duty to disclose known and material defects. For the reasons already stated, Plaintiffs have stated a viable claim of failure to disclose. Accordingly,

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[2]The Secret Warranty Law defines an "adjustment program" as "any program or policy that expands or extends the consumer's warranty beyond its stated limit or under which a manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance, other than service provided under a safety or emission-related recall campaign." It excludes "ad hoc adjustments made by a manufacturer on a case-by-case basis." Cal. Civ. Code § 1795.90(d).

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they have stated claims for unlawful, fraudulent, and unfair business practices. As noted, they have also stated an unlawful business practices claim based on the Secret Warranty Law.

E. Fraud By Omission Claim

The fifth claim for relief is entitled "fraud by omission," but Plaintiffs also alleged that Defendant made "partial disclosures." SAC ¶ 113(b). In their opposition brief, Plaintiffs confirmed that this claim is based solely on a theory of omission.

Plaintiffs' allegations of nondisclosure satisfy the heightened pleading requirements of Fed. R. Civ. P. 9(b). They allege specific facts showing Defendant's knowledge and concealment of the alleged defect. They allege that Defendant was obligated to, but did not, disclose specific material facts about the AIS from 2001 onward for specified model years of specified vehicles. They alleged justifiable reliance in that a reasonable customer would not have purchased the car or would have paid less for it had the defect been disclosed, and they allege actual damages for the expense of repairing the AIS and related damage. *See Falk*, 496 F. Supp. 2d at 1099 (holding similar allegations to be sufficient under Rule 9(b)).

F. Unjust Enrichment Claim

The Court will dismiss Plaintiff's unjust enrichment claim because it is not clear whether unjust enrichment is a cause of action or merely an equitable remedy and including such a claim would not enlarge the range of remedies Plaintiffs may otherwise seek. *See Baggett v. Hewlett-Packard Co.*, 582 F. Supp. 2d 1261, 1270-71 (C.D. Cal. 2007) (Guilford, J.) (dismissing unjust enrichment claim for the same reasons); *Falk*, 496 F. Supp. 2d at 1099-1100 (same).

G. Preemption of Recall Remedy

Defendant argues that to the extent Plaintiffs seek Court-ordered notification and recall, such relief would frustrate Congressional objectives behind the Motor Vehicle Safety Act and thus would be preempted under the doctrine of implied conflict preemption. Among other things, Plaintiffs' request for injunctive relief seeks an order

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-04876 AHM (JTLx)	Date	May 4, 2009
Title	ARUTYUN MARSIKIAN, *et al.* v. MERCEDES BENZ USA, LLC, *et al.*		

"to remove and replace Plaintiffs' and Class Members' AIS with a suitable alternative product." SAC ¶ 126. Plaintiffs respond that they seek a range of injunctive remedies that does not necessarily include a recall. In their reply, Defendant insists that Plaintiffs are effectively seeking a recall. It is not clear to the Court whether the relief Plaintiffs seek actually amounts to a recall and what disposition Defendant seeks at this pleading stage. In that respect, Defendant's request to bar a recall is premature.

In any event, Defendant has not shown that preemption doctrine would bar a recall remedy. The Court finds persuasive the reasoning of *Chamberlan v. Ford Motor Co.*, 314 F. Supp. 2d 952 (N.D. Cal. 2004), which held that conflict preemption did not bar state law claims based on motor vehicle defects. Like here, the *Chamberlan* plaintiffs alleged that the car manufacturer failed to disclose a safety defect. *Id.* at 955. They likewise argued that the remedy they sought might fall short of a recall. *Id.* at 958. Judge Wilken began by explaining that a presumption against preemption applied because the regulatory fields in question -- motor vehicle safety and unfair business practices -- were areas of traditional State police power. *Id.* at 958-59. Then, in an extremely thorough analysis, the court determined that Congress did not intend that there be an exclusive and uniform federal remedy for motor vehicle defects. *Id.* at 962-64. Thus, the court concluded, the Ford Motor Company had not met its burden of showing that allowing plaintiffs to pursue their state law claims would frustrate any Congressional objectives. *Id.* at 967.

Defendant's position here is that the Northern District was simply mistaken. Yet it makes the same arguments that the Ford Motor Company made, arguments that the Northern District rejected with well-reasoned explanations. It relies on cases that are less similar to this case than *Chamberlan.* And it asserts that the presumption against preemption to cases might not apply to cases involving conflict preemption, a position that can no longer be persuasive in light of *Wyeth v. Levine*, 129 S.Ct. 1187, 1194 (2009) (calling the presumption against preemption one of the "two cornerstones of our pre-emption jurisprudence").

H. Doctrine of Primary Jurisdiction

Defendant asks that the Court stay this action and refer the issue of whether a safety defect exists to the NHTSA under the doctrine of primary jurisdiction. The Court

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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denies this request.

Courts may find that an administrative agency has "primary jurisdiction" over a judicially cognizable claim where "enforcement of the claim requires the resolution of issues, which, under a regulatory scheme, have been placed within the special competence of an administrative body." *United States v. Western Pacific Railroad Co.*, 352 U.S. 65, 77 S.Ct. 161, 165 (1956). *Western* involved the determination under the Transportation Act of 1940 of shipment rates for steel aerial bomb cases filled with napalm gel. *Id.* at 163. Several railroads charged the Army the higher rate applicable to "incendiary bombs." *Id.* Applying the primary jurisdiction doctrine, the Supreme Court concluded that because this issue implicated basis questions of national transportation policy, effectuation of the statutory purposes of the Interstate Commerce Act required that the Interstate Commerce Commission have a "first pass" on the question of whether the higher tariff applied. *Id.* at 166, 168. *See Farmers Ins. Exchange v. Superior Court*, 2 Cal.4th 377, 397 (Cal. 1992) (agreeing with other courts that insurance rate-making often poses issues requiring specialized agency fact-finding and expertise and determining that the insurance rate-making questions in the case at hand called for initial action by the Insurance Commissioner).

Defendant cites no cases from federal or California courts that analyze the applicability of the primary jurisdiction doctrine in a case involving automobile safety, much less cases that hold that the NHTSA does have primary jurisdiction.[3] Nor does Defendant provide any specific reasons why the doctrine should apply to the warranty

[3]The only automobile defect case cited by Defendant is an unpublished trial court decision from North Carolina, where the court held the NHTSA had primary jurisdiction to order a recall. *See Coker v. DaimlerChrysler Corp.*, 2004 WL 32676 (N.C. Sup. Ct., Jan. 5. 2004). The few federal cases cited by Defendant did not apply the primary jurisdiction doctrine and only addressed the appropriateness of a recall remedy in the context of class certification. *See Chin v. Chrysler Corp.*, 182 F.R.D. 448, 464 n. 6 (D.N.J. 1998) (questioning the appropriateness of the recall sought by plaintiffs in dicta on a motion for class certification); *Walsh v. Ford Motor Co.*, 130 F.R.D. 260, 267 (D.D.C. 1990) (denying certification of a Rule 23(b)(2) class of all owners seeking recall and retrofit based on concern that the court could not enforce a recall remedy and desire to avoid entanglement with regulatory scheme).

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UNITED STATES DISTRICT COURT
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and failure to disclose claims in this case. Unlike *Western* and *Farmers Ins. Exchange*, this action presents no claims arising under any statutes that the NHTSA enforces, only claims that primarily rest on contract and tort principles. Other than its questionable assertion that this case involves a request for a recall, Defendant does not specify any particular issues within the NHTSA's special competence that must be resolved in this action.

V. CONCLUSION

For the foregoing reasons, the Court GRANTS the motion as to the express warranty claim and the unjust enrichment claim, and DENIES the motion as to the other claims. The Court dismisses the express warranty claim with leave to amend and orders Plaintiffs to file a Third Amended Complaint by May 11, 2009 in accordance with the Court's ruling on that claim. The Court dismisses the unjust enrichment claim without leave to amend.

No hearing is necessary. Fed. R. Civ. P. 78; L. R. 7-15.

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Initials of Preparer SMO

Exhibit 6

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1993-94 Regular Session

SB 486 (Rosenthal)
As amended May 3
Hearing date: May 4, 1993
Civil Code
ART

SB 486

MOTOR VEHICLES: DISCLOSURE OF "SECRET WARRANTIES"

HISTORY

Source: Author

Prior Legislation: None

Support: Motor Voters; Mac Music Magic; Concerned Citizens for Fairness; Consumers' Union; California Trial Lawyers Association; American Association of Retired Persons; The Trauma Foundation

Opposition: No Known

(THIS ANALYSIS REFLECTS AUTHOR'S AMENDMENTS TO BE OFFERED IN COMMITTEE.

PURPOSE

Existing law, the Song-Beverly Warranty Act, requires manufacturers of consumer goods, including new motor vehicles, to comply with certain requirements when they sell goods in the State of California and expressly warrant these goods.

There is no State statutory duty on a motor vehicle manufacturer or dealer to provide consumers with information about defects or extended warranty programs before or after the sale of new cars.

New car dealers would have the following duties under this bill:

(1) post conspicuously in the showroom a notice to prospective car buyers and lessees explaining where they can obtain copies of bulletins describing defects filed by automobile manufacturers with the National Highway Traffic Safety Administration.

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The sign shall also state that upon a consumer request the following information shall be provided: (1) any adjustment program applicable to a particular vehicle; (2) any unrepaired manufacturer's defect in a particular vehicle that has been described in a service bulletin.

(2) shall disclose to consumers seeking repairs for a particular condition at its repair shop, the principal terms and conditions of the manufacturer's adjustment program covering the condition, if the dealer has received a service bulletin concerning the adjustment program or otherwise has knowledge of it.

(3) shall provide the purchaser of a new motor vehicle a notice outlining the provisions in the bill and the rights and remedies available. The written notice shall state the following:

> Sometimes (insert manufacturer's name) offers a special adjustment program to pay all or part of the cost of certain repairs beyond the terms of the warranty. Check with your dealer or the manufacturer to determine whether any adjustment program is applicable to your motor vehicle.

Automobile manufacturers would have the following duties:

(1) shall, within 90 days of adopting an adjustment program, notify by first-class mail all owners or lessees of motor vehicles eligible under the program (an adjustment program means any program or policy that expands or extends the consumer's warranty beyond its stated limit or under which a manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for the cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance).

(2) shall, within 30 days of adopting an adjustment program, notify the dealer in writing of all the terms and conditions of the program.

(3) shall implement procedures to assure reimbursement of each consumer eligible under an adjustment program who incurs expenses for repair of a condition subject to the program prior to acquiring knowledge of the program.

This bill provides the following remedies to consumers:

(1) allows the consumer to file with the manufacturer a claim for reimbursement for expenses incurred in repairing the condition subject to the adjustment program. Such claim shall be in writing to the manufacturer within two years of the date of the consumer's paying for the repairs. The manufacturer has 21 days of receiving the claim to respond to the consumer whether the

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claim will be allowed or denied. If denied, the specific reasons for the denial must be stated.

(2) would allow any consumer damaged by the failure of a manufacturer, importer, distributor, or dealer to comply with the requirements of this bill to bring an unfair or deceptive trade practice action.

(3) consumers can bring an action to recover damages, including reasonable attorneys fees and costs. Furthermore, if the buyer establishes that the failure to comply was willful, the judgment may include, a civil penalty not to exceed two times the amount of actual damages.

(4) consumers may file a complaint with the Department of Motor Vehicles, which may consider the suspension or revocation of the dealer's license.

(5) furthermore, these remedies are in addition to any other laws available to consumers.

This bill also defines consumer, manufacturer, dealer, motor vehicle, lessee, adjustment program and service bulletins.

The purpose of this bill is to require certain disclosures by manufacturers and dealers that would help consumers learn of so-called "secret warranties" which are available but not offered by car manufacturers.

COMMENTS

1. Stated need for legislation

According to the author, this bill is needed because auto manufacturers currently engage in the practice of issuing "secret warranties" (also known as silent recalls) to minimize consumer awareness about defects in their vehicles. Enactment of SB 486 will require automakers and dealers to inform car shoppers and existing owners how to obtain information on these defects and whether the manufacturer has offered to pay to repair such defects.

2. Federal law and safety related defects: recalls mandated

The National Highway Traffic and Motor Vehicle Safety Act (NHTSA) was enacted by Congress to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents.

When vehicles are recalled because of specific safety-related defects the Act requires manufacturers to notify current owners so that corrective steps may be taken by the dealers. The

(More)

dealers must also fix the problem on any cars still in their possession before selling them.

The Act requires notice to owners not only where vehicle fails when used in conformity with manufacture's instructions, but also where there is inadequate margin of safety to protect against failure during reasonably expected vehicle operations. United States v. General Motors Corp. (1975) 171 App DC 27 [518 F2d 420].

The defects may be those discovered by the manufacturer itself or those defects discovered by the government through testing, inspection, investigation or research carried out pursuant to the Act.

The defects must relate to motor vehicle safety. This requirement, i.e. safety-related defects, fails to provide consumers protection in three ways:

(1) there is too much discretion left to automakers to decide what's "safety-related";

(2) even non-safety-related defects can reduce a vehicle's durability, reliability, performance, appearance, and re-sale value;

(3) new car buyers don't find out about so-called non-safety defects until after their purchase, when they receive the manufacturer's recall notice.

According to supporters of the bill, manufacturer's to avoid recalls -- either because the defect is minor or to avoid publicity and higher costs -- often issue "technical service bulletins" to their dealers. Copies of these service bulletins are sent to NHTSA, whether or not they are safety related, but not directly to the owners of the cars.

Consumers in the market for a new car are in the dark. Dealers do not routinely disclose to customers that a particular vehicle has a known defect (unless the manufacturer has issued a safety-related recall, in which case the dealer cannot sell it until its fixed). This prevents new car buyers from factoring this information into their purchasing decision.

3. Pre-notification of non-safety related defects

The proponents believe that it is not uncommon for auto manufacturers to minimize the safety implications of certain defects. In such cases, there is no requirement that owners be notified; information is merely passed along to NHTSA via technical service bulletins and to the dealers. Proponents point to the following examples:

Ford did not notify owners or buyers about faulty gas gauges,

(More)

saying they did not pose a serious risk. Apparently, they had to settled with a man who lost his leg when his car unexpectedly ran out of gas and he was hit.

GM decided a computer chip in 600,000 of its new cars did not pose a safety risk. They issued a service bulletin to dealers to replace the chips for customers who complained. The defective chip caused a 3-day-old 1988 Chevrolet Silverado to stall at an intersection and the car was hit by a truck, killing a boy and injuring the driver.

This bill requires dealers to post a notice specifying to prospective purchasers and lessees how to receive copies of service bulletins. The notice needs to be posted in a conspicuous place in the showroom and must include the following statements:

FEDERAL LAW REQUIRES MANUFACTURERS TO FURNISH THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (N.H.T.S.A.) WITH BULLETINS DESCRIBING ANY DEFECTS IN THEIR VEHICLES.

YOU MAY OBTAIN COPIES OF THESE BULLETINS FROM EITHER OF THE FOLLOWING:

THE MANUFACTURER (ASK YOUR DEALER FOR THE TOLL-FREE NUMBER). A FEE MAY BE CHARGED.

N.H.T.S.A. -- (202) 366-2768. A FEE WILL BE CHARGED.

IN ADDITION, CERTAIN CONSUMER PUBLICATIONS PUBLISH THESE BULLETINS AND SOME COMPANIES WILL MAIL THEM TO YOU, FOR A FEE.

4. Post notification of Secret Warranties

When a new automobile has a major defect that occurs after its warranty expires, the manufacturer frequently establishes an warranty adjustment program or policy to pay for the repairs. Since the manufacturer never notifies the consumer, the policy or program is known as a "secret warranty". This "secret warranty" only applies to consumers who either complain loudly enough or to the right person.

Secret warranties, according to the Center for Auto Safety (CAS), are a long-standing industry practice. The practice of issuing these warranty adjustment program or policy is an attempt to deal with the many thousands of complaints at once as oppose to dealing with complaints on an individual basis. The program works like this: a widespread problem is acknowledged in the notification, with instructions on how to correct the defect, what parts are needed, and how much time is required to complete the repair. Authorization to provide free repairs is given. Yet auto manufacturers never notify the owners of the cars covered by the warranty adjustment program. Most of the times, the auto manufacturer communicates the

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policy only to its regional offices; sometimes not even the dealers are notified. Therefore, only the consumer who complains loudly enough gets covered by the secret warranty.

CAS has compiled a list of 10 major post-warranty reimbursement programs established by different auto makers. Some of these "secret warranties" include:

(1) premature tire wear, 1985-86 GM mid- and full-size cars, pickups and vans;
(2) floor pan cracks, 1979-83 Ford Mustangs and Mercury Capri's;
(3) cracked blocks and cracked heads, 1982-84 GM cars with four-cylinder engines;
(4) seat belts, 1970-86 Honda cars, all models;
(5) power steering failure, 1980-84 GM front-wheel-drive A, J and X-cars.

This bill would simply require dealers to provide a written notice to new motor vehicle buyers making them aware that the specific manufacturer may offer special adjustment program beyond the terms of the warranty. The notice would further state to consumers to check with the dealers or the manufactures to determine whether any adjustment program applies to the motor vehicle being purchased by the buyer.

> Sometimes (insert manufacturer's name) offers a special adjustment program to pay all or part of the cost of certain repairs beyond the terms of the warranty. Check with your dealer or the manufacturer to determine whether any adjustment program is applicable to your motor vehicle.

6. Comments by Toyota Motor Sales, USA

Although not formally oppose to this legislation, Toyota has requested that the bill be amended to substantially conform with the Connecticut adjustment warranty law. Specifically, Toyota opposes provisions in this legislation which are different from the Connecticut law. This bill differs from the Connecticut law in that (1) it requires pre-sale notice about service bulletins and; (2) it establishes a private right of action for civil penalties resulting from a violation of the act.

Pre-sale notice: Toyota believes "[t]he state should not intervene and create a state-mandated referral process to help federal agencies disseminate consumer information. NHTSA's information is already public and available --responsibility for information dissemination should not be assumed by the state or dealers/manufacturers."

Penalty provisions: Toyota believes that the enforcement of warranty adjustment law should be left to public and private

litigants via the state's unfair competition act. Furthermore, they state, there is no pre-enactment data to suggest that a new warranty adjustment law will be ignored by dealers and the public prosecutors will not aggressively enforce the new law.

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Exhibit 7

Slip Copy, 2009 WL 5206647 (E.D.Cal.)
(Cite as: 2009 WL 5206647 (E.D.Cal.))

HOnly the Westlaw citation is currently available.

United States District Court,
E.D. California.
Daniel Stacey WINN, individually and assuccessor in interest to Petra Monika Winn, deceased, Kory Michael Winn, individually and as successor in interest to Petra Monika Winn, deceased, Breeonna Winn, individually and as successor in interest to Petra Monika Winn, deceased, Erika Winn, individually and as successor in interest to Petra Monika Winn, deceased,
Plaintiffs,
v.
CHRYSLER GROUP, LLC, a Delaware corporation, successor in interest to Daimler Chrysler Corporation; Magna Powertrain, Inc.; Magna International of America, Inc. also known as Magna Powertain; Great Valley Chrysler Jeep, an unknown business entity; Enterprise Rent-a-Car Company, a California corporation; S.J. Denham, Inc., a California corporation, Deborah Matisengle; and Does 1 through 100, inclusive,
Defendants.
No. 2:09-cv-02805-MCE-GGH.

Dec. 24, 2009.

R. Ben Hogan, Hogan Law Office, P.C., Birmingham, AL, Todd Everitt Slaughter, Reiner, Simpson and Slaughter, Redding, CA, for Plaintiffs.

John Garland Gherini, Wayne Allen Wolff, Sedgwick, Detert, Moran & Arnold LLP, Stephen S. Walters, Allen Matkins Leck Gamble Mallory & Natsis LLP, San Francisco, CA, Audrey Ann Smith, Howie & Smith, LLP, San Mateo, CA, for Defendants.

MEMORANDUM AND ORDER

MORRISON C. ENGLAND, JR., District Judge.

***1** Plaintiffs have moved to remand this case back to the Superior Court of the State of California in and for the County of Shasta, where it originated, on grounds that the claims against Defendant Chrysler Group, who removed the case to this Court, do not arise under federal law. Alternatively, Plaintiffs also argue for remand on equitable grounds and further assert that this Court should abstain from hearing the matter. As set forth below, Plaintiffs' Motion to Remand will be granted.

BACKGROUND

This wrongful death case arises from a motor vehicle accident that occurred in Shasta County, California on August 13, 2007 as Plaintiffs' decedent, Petra Monika Winn, was driving a 2004 Chrysler Sebring automobile. Ms. Winn was killed as a result of the accident. Through this action, Plaintiffs seeks damages against alleged manufacturers/suppliers of the Chrysler vehicle and its component parts (Defendants Chrysler Group, LLC/Daimler AG and Defendants Magna Powertrain/Magna International, who allegedly furnished the gas tank utilized in the vehicle). Additionally, Defendants include Great Valley Chrysler Jeep, who purportedly sold the Chrysler vehicle to Defendant Enterprise Rent-a-Car, S.J. Denham, Inc. who bought the vehicle from Great Valley and sold it to Plaintiffs' decedent, and Defendant Deborah Matisengle, who apparently drove the other vehicle involved in the accident.

Defendant Chrysler Group removed the action to this Court on grounds that under the terms of its purchase of Chrysler assets from Chrysler Group's predecessor in interest, Chrysler Corp. LLC (who is not a Defendant in this lawsuit), any successor liability on Chrysler Group's part was specifically excepted. Because that agreement was approved by the bankruptcy court overseeing Chrysler Corp.'s bankruptcy proceeding, Defendant Chrysler Group removed Plaintiff's entire case to federal court pursuant to 28 U.S.C §§ 1452(a) and 1334, which provide for federal jurisdiction on cases arising under or related to bankruptcy proceedings under Title 11.

Plaintiffs argue that because the bankruptcy proceedings as to Defendant Chrysler Group's predecessor at most give rise to a defense available to Chrysler Group in this matter, it does not arise under federal law because it does not derive from the allegations of Plaintiffs' complaint itself. Plaintiffs further contend that equitable grounds also mandate remand. They point out that their complaint itself alleges only state law causes of action, argue that Chrysler Group's potential

bankruptcy defense relates only to one of several different defendants sued in this matter, and emphasize that the bankruptcy debtor, Chrysler Corp. LLC, is not even a party to this lawsuit.

Defendant Chrysler Group argues that federal jurisdiction is invoked because this matter qualifies as a "core" proceeding with regard to Chrysler Corp's bankruptcy. Chrysler Group alternatively argues that Plaintiffs' claims against it are "related" to the bankruptcy case in that they directly challenge the bankruptcy debtor's sale of assets.

***2** Finally, Chrysler Group argues that this Court has exclusive jurisdiction over bankruptcy issues like those raised herein, and that in any event the equities weigh in favor of exercising jurisdiction.

STANDARD

A defendant may remove any civil action from state court to federal district court if the district court has original jurisdiction over the matter. 28 U.S.C. § 1441(a). Generally, district courts have original jurisdiction over civil actions in two instances: (1) where there is complete diversity between the parties, or (2) where a federal question is presented in an action arising under the Constitution, federal law, or treaty. 28 U.S.C. §§ 1331 and 1332.

The removing party bears the burden of establishing federal jurisdiction. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir.1988). Furthermore, courts construe the removal statute strictly against removal. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992) (citations omitted). If there is any doubt as to the right of removal in the first instance, remand must be granted. *See Gaus*, 980 F.2d at 566. Therefore, if it appears before final judgment that a district court lacks subject matter jurisdiction, the case shall be remanded to state court. 28 U.S.C. § 1447(c).

The district court determines whether removal is proper by first determining whether a federal question exists on the face of the plaintiff's well-pleaded complaint. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). If a complaint alleges only state-law claims and lacks a federal question on its face, then the federal court must grant the motion to remand. *See* 28 U.S.C. § 1447(c); *Caterpillar*, 482 U.S. at 392. Nonetheless, there are rare exceptions when a well-pleaded state-law cause of action will be deemed to arise under federal law and support removal. They are "(1) where federal law completely preempts state law, (2) where the claim is necessarily federal in character, or (3) where the right to relief depends on the resolution of a substantial, disputed federal question." *ARCO Envtl. Remediation L.L.C. v. Dep't of Health & Envtl. Quality of Mont.*, 213 F.3d 1108, 1114 (9th Cir.2000) (internal citations omitted).

ANALYSIS

Defendant Chrysler Group does not dispute Plaintiffs' assertion that diversity is unavailable here as a basis for federal jurisdiction on grounds that several of the Defendants, like Plaintiffs, are California residents. Instead, Chrysler argues that a federal question confers jurisdiction on this Court. Although the causes of action pled in the Complaint itself are claims for negligence, products liability, and related claims arising under state law, Chrysler maintains that the bankruptcy of its predecessor in interest, Chrysler Corp. LLC, provides the requisite link to federal law.

Chrysler Group makes this contention despite the fact that Chrysler Corp. LLC, the debtor in bankruptcy, is not a Defendant to this lawsuit, and despite the fact that the bankruptcy proceedings are not mentioned in Plaintiffs' Complaint.

***3** Generally, "a cause of action arises under federal law only when the plaintiff's well-pleaded complaint raises issues of federal law." *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987). A case cannot usually be removed to federal court on the basis of a federal defense, alone. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 393, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). An exception is recognized if the controlling force of a federal statute is so strong that it "completely preempts" an area of state law. *Taylor*, 481 U.S. at 63-64.

Defendant Chrysler Group argues that the sale of Chrysler Corp. LLC's assets, as approved by the bankruptcy court, is a "core" bankruptcy proceeding under 11 U.S.C. §§ 157(b) and 363(f). According to the Chrysler Group, this case qualifies as a core proceeding because Plaintiffs' Complaint challenges the bankruptcy court's sale order in the Chrysler Corp.

LLC bankruptcy case, by allegedly contending that the elimination of successor liability to Chrysler Group was improper. Defendant Chrysler Group argues that in core proceedings, a bankruptcy court has "comprehensive power and may enter appropriate orders and judgments." *In re Petrie Retail Inc.*, 304 F.3d 223, 228 (2d Cir.2002).

Defendant Chrysler further argues that because Plaintiffs filed a proof of claim in the Chrysler Corp. LLC bankruptcy case, they necessarily submitted to the bankruptcy court's jurisdiction, making this a core proceeding on that basis as well. Alternatively, Defendant Chrysler urges the court to assert subject matter jurisdiction on grounds that this proceeding is "related to" the bankruptcy case under 28 U.S.C. § 1334(b) since its outcome could conceivably effect the bankruptcy estate. *See In re Fietz*, 852 F.2d 455, 457 (9th Cir.1988).

Underlying all these asserted bases for federal jurisdiction is Defendant Chrysler's contention that Plaintiffs' claims against the Chrysler Group are a "direct challenge" to the bankruptcy court's Sale Order, with Plaintiff's state common law claims essentially amounting to "disguised" bankruptcy claims. *See* Def.s' Opp'n, 15:13-15, 18:10. These contentions are specifically directed to the Plaintiffs' successor-in-interest claims against Chrysler Group.

Defendant Chrysler Group's claims in this regard lack merit inasmuch as Plaintiffs have voluntarily dismissed all of the successor claims against it; namely, the First through Fourth Causes of Action for Strict Liability, Negligence [FN1] and Breach of Implied Warranty, respectively.

> FN1. Both Plaintiffs' Second and Third Causes of Action sound in negligence.

Without those successor claims, even Defendant Chrysler's Opposition to this Motion makes it clear that any reasoned basis for federal jurisdiction is absent since it is only the successor claims that Defendant Chrysler identifies as running afoul of the bankruptcy court's Sales Order, which specifically exempted such claims in Chrysler Group's asset purchase. Plaintiffs' remaining claims against Defendant Chrysler Group, as set forth in the Fifth and Sixth Causes of Action, are for indemnity arising from Defendant Chrysler's alleged obligations to its dealers. Nowhere does the Chrysler Group allege that those claims are successive in nature, and nowhere does Chrysler contend that those claims are governed by the terms of Chrysler Corp. LLC's bankruptcy proceedings.

***4** The Court is consequently unpersuaded that the remaining claims against Chrysler Group are core bankruptcy claims because they are neither unique to, or uniquely affected by, Chrysler Corp. LLC's bankruptcy proceedings, and further do not directly affect core bankruptcy functions. *In re Petrie Retail, Inc.* 304 F.3d at 230. As set forth above, Defendant Chrysler Group implicated only the successor claims in that regard, and those claims have been dismissed. Defendant Chrysler's contention that Plaintiffs' claims are "related to" the bankruptcy proceeding are undercut for the same reason: no viable argument has been made that the remaining indemnity claims vis-a-vis Chrysler Group's dealers will affect the handling and administration of Chrysler Corp. LLC's bankruptcy estate.

Finally, the Court rejects as wholly illogical the contention that just because Plaintiffs filed a proof of claim against a non-party to the present lawsuit (Chrysler Corp. LLC), its claims against Defendant Chrysler Group and the other Defendants automatically become core proceedings subject to the jurisdiction of the bankruptcy court.

The Court's conclusion that no cognizable federal claim is presented, and that this matter should accordingly be remanded back to the originating state court, is further underscored by consideration of the factors governing equitable remand, which also demonstrate that this matter should go back to state court. To determine whether remand is warranted on equitable grounds, the following factors should be considered: "(1) the effect of the action on the administration of the bankruptcy estate; (2) the extent to which the issues of state law predominate; (3) the difficulty of applicable state law: (4) comity; (5) the relatedness or remoteness of the action to the bankruptcy case: (6) the existence of a right to jury trial; and (7) prejudice to the party involuntarily removed from state court. *In re Baptist Foundation of Arizona*, 2000 WL 35575676 at *7 (D.Ariz.1996), citing *Williams v. Shell Oil Co.*, 169 B.R. 684, 692 (S.D.Cal.1994).

Here, as already indicated, the bankruptcy debtor,

Chrysler Corp. LLC, is not even a party to this lawsuit. In the absence of the successor claims, Chrysler Group has not demonstrated how the indemnity claims will impact the handling of the bankruptcy estate. Moreover, to the extent that bankruptcy is a potential issue, it affects only a single affirmative defense available to one defendant in a multiple-defendant case, and is consequently remote with regard to the case as a whole. Finally, to the extent that a bankruptcy defense is appropriate as to Defendant Chrysler Group, there is no reason in any event why the defense cannot be asserted in state court. State law issues clearly predominate, and trying this case together in state court, in a forum that can adjudicate this entire matter through a unitary jury trial, clearly favors concerns of both judicial economy and comity. Contrary to Defendant Chrysler's contention, given the case as it now stands this is not an attempt by Plaintiffs to relitigate the issue of successor liability in another forum.

CONCLUSION

***5** Based on the foregoing, the Court finds this this case should be remanded to the originating state court, the Superior Court of the State of California in and for the County of Shasta, for final adjudication.

Plaintiffs' Motion to Remand (Docket No. 15) is accordingly GRANTED. [FN2] Defendant Chrysler Group's Motion to Transfer Venue (Docket No. 8) to the United States District Court for the Southern District of New York, for referral to the United States Bankruptcy Court in that District is DENIED as moot.

> FN2. Because oral argument will not be of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

IT IS SO ORDERED.

E.D.Cal.,2009.
Winn v. Chrysler Group, LLC
Slip Copy, 2009 WL 5206647 (E.D.Cal.)

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Exhibit 8 (part 1 of 2)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
Chrysler LLC, *et al.*,	:	Case No. 09-50002 (AJG)
Debtors.	:	(Jointly Administered)

ORDER (I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH AND RELATED PROCEDURES AND (III) GRANTING RELATED RELIEF

This matter coming before the Court on the motions, dated May 3, 2009 and May 22, 2009 (Docket Nos. 190 and 1742) (collectively, the "Sale Motion")[1] filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (the "Sale Order"), pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 6004-1, 6006-1 and 9006-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York: (i) authorizing and approving the entry into, performance under and terms and conditions of the Master Transaction Agreement, dated as of April 30, 2009 (collectively with all related agreements, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, and as amended, the "Purchase Agreement"), substantially

[1] Unless otherwise stated, all capitalized terms not defined herein shall have the meanings given to them in the Sale Motion and the Bidding Procedures Order (as defined below).

in the form attached hereto as Exhibit A (without all of its voluminous exhibits), between and among Fiat S.p.A. ("Fiat"), New CarCo Acquisition, LLC (the "Purchaser"), a Delaware limited liability company formed by Fiat, and the Debtors,[2] whereby the Debtors have agreed to sell, and the Purchaser has agreed to purchase the "Purchased Assets" (as such term is defined in Section 2.06 of the Purchase Agreement), which Purchased Assets include, without limitation, the Assumed Agreements (as defined below), substantially all of the Debtors' tangible, intangible and operating assets related to the research, design, manufacturing, production, assembly and distribution of passenger cars, trucks and other vehicles (including prototypes) under brand names that include Chrysler, Jeep® or Dodge (the "Business"), certain of the facilities related thereto and all rights, intellectual property, trade secrets, customer lists, domain names, books and records, software and other assets used in or necessary to the operation of the Business or related thereto to the Purchaser (collectively, and including all actions taken or required to be taken in connection with the implementation and consummation of the Purchase Agreement, the "Sale Transaction"); (ii) authorizing and approving the sale by the Debtors of the Purchased Assets, free and clear of liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), liabilities, encumbrances, rights, remedies, restrictions and interests and encumbrances of any kind or nature whatsoever whether arising before or after the Petition

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2 The following Debtors are "Sellers" under the Purchase Agreement: Alpha Holding, LP ("Alpha"), Chrysler, LLC; Chrysler Aviation Inc.; Chrysler Dutch Holding LLC; Chrysler Dutch Investment LLC; Chrysler Dutch Operating Group LLC; Chrysler Institute of Engineering; Chrysler International Corporation; Chrysler International Limited, L.L.C.; Chrysler International Services, S.A.; Chrysler Motors LLC; Chrysler Realty Company LLC; Chrysler Service Contracts Florida, Inc.; Chrysler Service Contracts Inc.; Chrysler Technologies Middle East Ltd.; Chrysler Transport Inc.; Chrysler Vans LLC; DCC 929, Inc.; Dealer Capital, Inc.; Global Electric Motorcars, LLC; NEV Mobile Service, LLC; NEV Service, LLC; Peapod Mobility LLC; TPF Asset, LLC; TPF Note, LLC; and Utility Assets LLC.

Date,[3] whether at law or in equity, including all claims or rights based on any successor or transferee liability, all environmental claims, all change in control provisions, all rights to object or consent to the effectiveness of the transfer of the Purchased Assets to the Purchaser or to be excused from accepting performance by the Purchaser or performing for the benefit of the Purchaser under any Assumed Agreement and all rights at law or in equity (collectively, "Claims") (other than certain liabilities that are expressly assumed or created by the Purchaser, as set forth in the Purchase Agreement or as described herein (collectively, the "Assumed Liabilities")); (iii) authorizing the assumption and assignment to the Purchaser of certain executory contracts and unexpired leases of the Debtors (collectively, the "Assumed Agreements") in accordance with the Contract Procedures set forth in the Bidding Procedures Order, the Purchase Agreement and this Sale Order; (iv) authorizing and approving the entry into, performance under and terms and conditions of the UAW Retiree Settlement Agreement (as defined herein); and (v) granting other related relief; the Court having conducted a hearing on the Sale Motion on May 27, 2009 through May 29, 2009 (collectively, the "Sale Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; the Court having reviewed and considered, among other things, (i) the Sale Motion and the exhibits thereto, (ii) the Purchase Agreement attached hereto as Exhibit A, (iii) this Court's prior order (Docket No. 492), dated May 8, 2009 (the "Bidding Procedures Order") approving competitive bidding procedures for the Purchased Assets (the "Bidding Procedures"), (iv) all objections to the Sale Transaction filed in accordance with the Bidding Procedures Order or raised on the record at the Sale Hearing, (v) Memorandum of Law in Support of Sale Motion

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[3] As used herein, "Petition Date" refers to (a) April 30, 2009 for all of the Debtors other than Alpha and (b) May 19, 2009 for Alpha.

(Docket No. 191), (vi) Supplemental Memorandum of Law in Support of Sale Motion (Docket No. 2130), (vii) the Consolidated Reply to Objections to the Sale Motion (Docket Nos. 2155 and 2565), (viii) the Statement of the United States Department of the Treasury in Support of the Commencement of Chrysler LLC's Chapter 11 Case (Docket No. 69), (ix) the Statement of the Official Committee of Unsecured Creditors in Support of Debtors Motion for Order Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances (the "Creditors' Committee Statement"), and the related Memorandum of Law (Docket No. 1846 and 2147); (x) the Response to Various Objections Relating to Successor Liability Issues (Docket No. 2111); (xi) the Response of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America to Motion of the Debtors and Debtors in Possession for an Order Authorizing the Sale of Substantially All of the Debtors' Operating Assets and Other Relief (Docket No. 2085); (xii) the Supplemental Statement of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers Union of America, AFL-CIO in Support of Motion of the Debtors and Debtors in Possession for an Order Authorizing the Sale of Substantially All of the Debtors' Operating Assets and Other Relief and Response to Individual Retiree Statements Concerning Approval of UAW Retiree Settlement Agreement (Docket No. 2094) and (xiii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that due notice of the Sale Motion and the Bidding Procedures Order has been provided in accordance with the Bidding Procedures Order and that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors and other parties in interest; and upon the record of the Sale Hearing and these cases; and after due deliberation thereon; and good and sufficient cause

appearing therefore, including for the reasons set forth in the Court's Opinion dated May 31, 2009 (Docket No. 3073);

IT IS HEREBY FOUND AND DETERMINED THAT:

THE DEBTORS AND THESE CASES

A. As of the Petition Date and for a period of more than a year before the commencement of these chapter 11 cases, the Debtors worked with financial advisors and with their various constituencies to try to raise capital or implement a viable transaction that would allow them to continue the Debtors' operations. (See DX 20; May 27, 2009 Hearing Tr. (Testimony of Tom Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 87-92). The Debtors presented credible evidence that, as of the Petition Date, they had explored strategic alternatives for the Business over an extended period of time and had communicated with more than 15 parties about possible sales, mergers, combinations and alternatives regarding debt or equity capital investments or financing and had prepared standalone business plans in the event that strategic alternatives did not materialize or were insufficient. (See Id.). The Sale Transaction is the result of the Debtors' extensive efforts.

JURISDICTION, FINAL ORDER AND STATUTORY PREDICATES

B. This Court has jurisdiction over the Sale Motion, the Sale Transaction and the Purchase Agreements pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a), and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. Debtor Peapod Mobility LLC ("Peapod") is a New York limited liability company. Debtor Chrysler Realty Company LLC ("Chrysler Realty") is the owner of certain valuable real property located on

11th Avenue in New York, New York. Debtor Chrysler is the direct or indirect parent of Peapod, Chrysler Realty and each of the other Debtors.

C. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief sought in the Sale Motion and granted in this Sale Order include, without limitation, sections 105(a), 363(b), (f) and (m) and 365(a), (b) and (f) of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004 and 6006.

JUDICIAL NOTICE

E. Pursuant to Federal Rule of Evidence 201(c), incorporated into these proceedings pursuant to Bankruptcy Rule 9017, the Court takes judicial notice of the (1) March 30, 2009 Remarks by the President of the United States on the American Automotive Industry; (2) April 30, 2009 Remarks by the President of the United States on the Auto Industry; and (3) the fact of the publication of the Notice of Proposed Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and Final Sale Hearing Related Thereto in the national editions of *The New York Times* on May 12, 2009, *The Wall Street Journal* on May 12, 2009 and *USA Today* on May 13, 2009, and the worldwide edition of *The Financial Times* on May 13, 2009. (See DX 8; DX 18; DX 19).

SOUND BUSINESS PURPOSE

F. The Debtors seek to convey the Purchased Assets, including those related to the research, design, manufacture (at 16 domestic manufacturing facilities), assembly (at seven domestic assembly plants) and wholesale distribution of passenger cars and trucks under

the brand names Chrysler, Jeep® and Dodge, all of which are subject to Claims, including those held by the Debtors' prepetition secured lenders. (See DX 64, at §2.06).

G. In the second half of 2008, Chrysler began to experience an "unprecedented" loss of cash (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)). Currently, the Debtors are losing over $100 million dollars per day. (See Deposition of Matthew Feldman, May 26, 2009, at 65:18-66:5). Unless the Sale Transaction is approved without delay, the Debtors' assets will continue to erode, and they will be forced to liquidate in the near term. (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Frank Ewasyshyn, May 24, 2009, at Exhibit 1, at 7-29)).

H. The Debtors have demonstrated, and the Purchase Agreement reflects, both (1) good, sufficient and sound business purposes and justifications for the immediate approval of the Purchase Agreement and the Sale Transaction (May 28, 2009 Hearing Tr. (Testimony James Chapman); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); and (2) compelling circumstances for the approval of the Purchase Agreement and the Sale Transaction outside of the ordinary course of the Debtors' business pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Sale Motion is not granted on an expedited basis (See May 28, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 9-27; Deposition of Frank Ewasyshyn, May 24, 2009, Exhibit 1, at 8-29). 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 proposed Sale Transaction, time is of the essence in (a) consummating the Sale Transaction, (b) preserving

the viability of the Debtors' businesses as going concerns and (c) minimizing the widespread and adverse economic consequences for the Debtors' estates, their creditors, employees, retirees, the automotive industry and the broader economy that would be threatened by protracted proceedings in these chapter 11 cases. (See DX 13; DX 14; May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Ronald Nardelli); May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of James Chapman); Deposition Tr. of Ronald Bloom, at 65; see generally DX 20).

I. The consummation of the Sale Transaction outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The Sale Transaction does not constitute a *sub rosa* plan of reorganization. (See DX 4; DX 5; DX 10; May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)).

J. Entry of an order approving the Purchase Agreement and all the provisions thereof is a necessary condition precedent to the Purchaser's consummation of the Sale Transaction, as set forth in the Purchase Agreement. (See DX 64, at § 8.02(q)).

K. The Purchase Agreement was not entered into, and none of the Debtors, the Purchaser or the Purchaser's present or contemplated owners, have entered into the Purchase Agreement or propose to consummate the Sale 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 Purchase Agreement, or proposing to consummate the Sale 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, possession thereof, or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing. (See DX 5; DX 6; DX 10; May 27, 2009 Hearing Tr. (Testimony of Altavilla)).

HIGHEST AND BEST OFFER

L. On May 8, 2009, this Court entered the Bidding Procedures Order approving Bidding Procedures for the Purchased Assets. The Bidding Procedures provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. No additional Qualifying Bids for the Purchased Assets were received by the Debtors. Therefore, the Purchaser's bid, as reflected in the Purchase Agreement, is the only Qualified Bid for the Purchased Assets and was designated as the Successful Bid pursuant to the Bidding Procedures Order (Docket No. 492). Likewise, no party came forward at the Sale Hearing with a bid or offer. As such, no Auction was conducted, and the Purchaser's bid, as reflected in the Purchase Agreement, was presented to the Court as the Successful Bid. (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)).

M. As demonstrated by the testimony and other evidence proffered or adduced prior to or at the Sale Hearing, and in light of the exigent circumstances presented and emergency nature of the relief requested (1) the Debtors have adequately marketed the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 87-92)); (2) the Purchased Assets are deteriorating rapidly in value and there are good business reasons to sell these assets outside of a plan of reorganization (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Frank Ewasyshyn, May 24, 2009, at Exhibit 1, at 7-29; Deposition of Matthew Feldman, May 26, 2009, at 65:21-66:5)); (3) the consideration

provided for in the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (4) the Sale Transaction, as a transfer of deteriorating assets, is an extraordinary, non-market transaction, the consideration for which exceeds what would have been obtainable in a transaction subject to ordinary market forces (See Deposition of Ronald Bloom, May 26, 2009, at 65:4-66:10); (5) the Sale Transaction is the only alternative to liquidation available to the Debtors (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (6) if the Sale Transaction is not approved and consummated, the Debtors will have no alternative but to cease operations and liquidate (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (7) the Sale Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including, without limitation, liquidation whether under chapter 11 or chapter 7 of the Bankruptcy Code (See DX; May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)); (8) no other party or group of parties has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo); May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (9) the consideration to be paid by the Purchaser under the Purchase Agreement exceeds the liquidation value of the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)) and (10) the consideration to be paid by the Purchaser under the Purchase Agreement constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and 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 the foregoing. (See DX 14; DX 15; May 28, 2009 Hearing Tr. (Testimony of James Chapman); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)). The Debtors' determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment. (See May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of James Chapman); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)).

N. Neither the Purchaser nor Fiat have furnished the Debtors with a good faith deposit in connection with the Purchase Agreement. The Debtors submit that in light of the extensive prepetition negotiations culminating in the various complex agreements with the Debtors, the United States Department of the Treasury (the "U.S. Treasury"), the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") and other stakeholders, as well as Fiat's substantial investment of time and resources, the Purchaser's and Fiat's commitment to consummate the Fiat Transaction is clear without the need to provide a good faith deposit. See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 (Testimony of David Curson); May 28, 2009 (Testimony of Robert Nardelli); May 28, 2009 (Testimony of James Chapman); Deposition of Matthew Feldman, May 26, 2009, at 37:21-39:1)).

BEST INTEREST OF CREDITORS

O. Approval of the Purchase Agreement and the consummation of the Sale Transaction with the Purchaser at this time is in the best interests of the Debtors, their estates, creditors, employees, retirees and other parties in interest. (See DX 6; Creditors' Committee Statement, at ¶ 2, Docket No. 1846; May 28, 2009 Hearing Tr. (Testimony of David Curson)).

DESCRIPTION OF THE PURCHASER AND THE PURCHASER'S GOOD FAITH

P. The Purchaser is a newly formed Delaware limited liability company that as of the date of the Sale Hearing, is a wholly-owned subsidiary of Fiat. The Purchaser is not an "insider" of any of the Debtors, as that term is defined by section 101(31) of the Bankruptcy Code. (See DX 64, at Art. IV-A).

Q. Upon the closing of the Sale Transaction (the "Closing"), (1) Fiat will contribute to the Purchaser certain valuable technology and management expertise, (2) the U.S. Treasury and Export Development Canada ("EDC") will lend the Purchaser approximately $8 billion in new financing and (3) the UAW Retiree Settlement Agreement, the entry into which is a condition to the UAW CBA (as defined below) and its assumption and assignment to Purchaser, will become effective. Following the making of the foregoing contributions to the Purchaser, Fiat, the VEBA (as defined below), the U.S. Treasury and EDC, through 7169931 Canada Inc., will hold 100% of the equity in the Purchaser. (DX 3; DX 64, Exhibit J, K).

R. The Purchaser is a person with whom the Debtors are associated within the meaning of section 525 of the Bankruptcy Code.

S. The Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtors and the Purchaser in good faith, without collusion and from arm's-length bargaining positions. The Purchaser has proceeded in good faith in all respects in connection with this proceeding, is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. None of the Debtors, the Purchaser nor the Purchaser's present or contemplated owners have engaged in any conduct that (1) would cause or permit the Purchase Agreement or any of the transactions contemplated thereby to be avoided; (2) would tend to hinder, delay or defraud creditors; or (3) impose costs and damages under section 363(n)

of the Bankruptcy Code. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 27, 2009 (Testimony of Robert Manzo); May 28, 2009 Hearing Tr. (Testimony of David Curson); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Matthew Feldman, May 26, 2009, at 37:21-39:1; Deposition Tr. of Ronald Bloom, at 87).

NOTICE OF THE SALE MOTION, AND THE CURE AMOUNTS

T. As evidenced by the affidavits and certificates of service filed with the Court, in light of the exigent circumstances of these cases and the wasting nature of the Debtors' temporarily idled facilities and assets and based upon the representations of counsel at the Sale Hearing and the testimony of the Debtors' claims and noticing agent, the Court finds that: (1) proper, timely, adequate and sufficient notice of the Sale Motion, the Bidding Procedures Order, the Sale Hearing and the UAW Retiree Settlement Agreement has been provided by the Debtors in accordance with the Bidding Procedures Order; (2) such notice, and the form and manner thereof, was good, sufficient, reasonable and appropriate under the exigent circumstances prevailing in these chapter 11 cases; and (3) no other or further notice of the Sale Motion, the Sale Transaction, the Bidding Procedures, the Sale Hearing or the UAW Retiree Settlement Agreement is or shall be required. (See DX 7; May 27, 2009 Hearing Tr. (Testimony of Daniel McElhinney)). In light of the need to grant the relief requested in the Sale Motion on an expedited basis to avoid any erosion in the going concern value of the Purchased Assets, a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including, but not limited to, the following:

(i) counsel to the Official Committees of Unsecured Creditors appointed in these chapter 11 cases under section 1102 of the Bankruptcy Code (the "Creditors Committee");

(ii) the U.S. Treasury, a prepetition lender and the provider of the debtor in possession financing approved by this Court on a final basis on May 20, 2009 (the "DIP Financing Facility")"), outside counsel to the U.S. Treasury and the Acting United States Attorney for the Southern District of New York;

(iii) counsel to EDC, a lender under the DIP Financing Facility;

(iv) counsel to the UAW;

(v) counsel to the Purchaser;

(vi) counsel to the administrative agent and collateral agent for the Debtors' prepetition secured First Lien Lenders (as defined below);

(vii) counsel to Cerberus;

(viii) counsel to Daimler;

(ix) parties who, in the past year, have expressed in writing to the Debtors an interest in acquiring the Purchased Assets;

(x) nondebtor parties (collectively, the "Non-Debtor Counterparties") to the Assumed Agreements;

(xi) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Purchased Assets or who are reflected as secured parties in lien searches conducted by the Debtors;

(xii) the Securities and Exchange Commission;

(xiii) the Internal Revenue Service;

(xiv) all applicable state attorneys general, local environmental enforcement agencies and local regulatory authorities;

(xv) all applicable state and local taxing authorities;

(xvi) the Office of the United States Trustee for the Southern District of New York;

(xvii) the Federal Trade Commission;

(xviii) the United States Attorney General/Antitrust Division of Department of Justice;

(xix) the Environmental Protection Agency;

(xx) the United States Attorney;

(xxi) the Pension Benefit Guaranty Corporation;

(xxii) applicable foreign regulatory authorities in non-U.S. countries in which the Debtors do business;

(xxiii) all parties that filed objections to the Sale Motion;

(xxiv) all entities that have requested notice in these chapter 11 cases under Bankruptcy Rule 2002;

(xxv) the Debtors' retirees and surviving spouses represented by the UAW, including the members of the "Class" as defined in the UAW Retiree Settlement Agreement;

(xxvi) all employees of the Debtors;

(xxvii) all dealers with current agreements for the sale or leasing of Chrysler, Jeep or Dodge brand vehicles;

(xxviii) any other party identified on the creditor matrix in these cases.

(See DX 7).

U. Additionally, the Debtors published notice of the Sale Transaction in the national editions of *USA Today*, *The Wall Street Journal* and *The New York Times*, as well as the worldwide edition of *The Financial Times*. (See DX 8). With regard to parties who have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, parties with potential contingent warranty claims against the Debtors), the Court finds that such publication notice was sufficient and reasonably calculated under the circumstances to reach such parties.

V. In accordance with the Contract Procedures as set forth in the Bidding Procedures Order, the Debtors have provided notice or shall provide notice (an "Assignment Notice") of their intent to assume and assign the Assumed Agreements and of the related proposed amounts ("Cure Costs") to cure prepetition and postpetition defaults under Assumed Agreements with each such Non-Debtor Counterparty. See Notices of Filing of Schedules of Designated Agreements (DX 16; DX 62; DX 63; Deposition of Scott Garberding, May 24, 2009,

Exhibit 1). The service and provision of the Assignment Notices that were served in accordance with the Bidding Procedures Order, was good, sufficient and appropriate under the circumstances and no further notice need be given with respect to the Cure Costs for the Assumed Agreements described by the Assignment Notices and the assumption and assignment of the Assumed Agreements. (See Affidavits of Service (Docket Nos. 1041, 1996, 1997, 1998, 2003, 2004, 2016, 2017, 2018, 2019, 2020, 2022, 2023, 2025, 2026, 2027, 2028, 2029, 2030, 2081 and 2108). All Non-Debtor Counterparties to the Assumed Agreements have had an opportunity to object to both the Cure Costs listed in the Assignment Notices and the assumption and assignment of the Assumed Agreements (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code). With respect to executory contracts or unexpired leases that are designated by the Debtors as Assumed Agreements pursuant to the Contract Procedures and Section 2.10 of the Purchase Agreement and for which responses to Assignment Notices are due after the entry of this Sale Order, the Contract Procedures provide all Non-Debtor Counterparties to such Assumed Agreements with the opportunity to object to both the Cure Costs identified in any Assignment Notice delivered to any such Non-Debtor Counterparty and the assumption and assignment of the applicable Assumed Agreement (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code).

SECTION 363(F) REQUIREMENTS MET FOR FREE AND CLEAR SALE

W. The Debtors may sell the Purchased Assets free and clear of all Claims because, in each case where a Claim is not an Assumed Liability, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Except as provided in this Sale Order, the assumption and assignment of each of the Assumed Agreements is also free and clear of all Claims other than the payment of the Cure Costs.

X. 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 sale and, as required by and in accordance with 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. (See DX 64).

Y. The transfer of Purchased Assets constituting "Collateral" as defined under that certain Second Amended and Restated Collateral Trust Agreement (the "CTA"), dated as of January 2, 2009, among, *inter alia*, certain of the Debtors and their subsidiaries, JPMorgan Chase Bank, N.A. as both First Priority Agent ("First Priority Agent") and Second Priority Agent, the U.S. Treasury as Third Priority Agent and Wilmington Trust Company as Collateral Trustee (the "Collateral Trustee") has been consented to for purposes of section 363(f)(2) of the Bankruptcy Code, subject to and in accordance with that certain Consent to Sale and Liquidation of Collateral delivered by the First Priority Agent as "Controlling Party" under the CTA to the Debtors (the "First Priority Consent"), subject to the terms of the First Priority Consent, including, without limitation, to the indefeasible payment by the Purchaser immediately upon the sale of the Purchased Assets of $2 billion in immediately available funds to the First Priority Agent to be applied as set forth in the First Priority Consent. The First Priority Consent binds all

parties holding debt under the First Lien Credit Agreement in their capacity as such (collectively, the "First Lien Lenders"). (See DX 55; DX 57).

Z. In addition, those holders of Claims who did object fall within one or more of the other subsections of sections 363(f) and 365 of the Bankruptcy Code as (1) the consideration received in exchange for the Purchased Assets is greater than the aggregate value of all liens on the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)), (2) there is a *bona fide* dispute with respect to certain of the Claims asserted (e.g., claims of certain dealers relating to the proposed rejection of their dealership agreements) (See May 28, 2009 Hearing Tr. (Testimony of Peter Grady); May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla)); or (3) such holders could be compelled in a legal or equitable proceeding to accept a money satisfaction of their Claims. The transfer of the Purchased Assets to the Purchaser under the Purchase Agreement will be a legal, valid and effective transfer of all of the legal, equitable and beneficial right, title and interest in and to the Purchased Assets free and clear of all Claims that are not Assumed Liabilities (including, specifically and without limitation, any products liability claims, environmental liabilities, employee benefit plans and any successor liability claims), except as otherwise provided in this Sale Order. All holders of Claims are adequately protected — and the Sale Transaction thus satisfies section 363(e) of the Bankruptcy Code — by having their Claims, if any, attach to the proceeds of the Sale Transaction ultimately attributable to the property against which they have a Claim or other specifically dedicated funds, in the same order of priority and with the same validity, force and effect that such Claim holder had prior to the Sale Transaction, subject to any rights, claims and defenses of the Debtors or their estates, as applicable, or as otherwise provided herein.

AA. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale Transaction, thus adversely affecting the Debtors, their estates, creditors, employees, retirees and other parties in interest if the sale of the Purchased Assets was not free and clear of all Claims other than Assumed Liabilities, or if the Purchaser would, or in the future could, be liable for any such Claims, including, without limitation and as applicable, certain liabilities (collectively, the "Excluded Liabilities") that expressly are not assumed by the Purchaser, as set forth in the Purchase Agreement or in this Sale Order. The Purchaser asserts that it will not consummate the Sale Transaction unless the Purchase Agreement specifically provides and this Court specifically 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 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 in equity, whether by payment, setoff or otherwise, directly or indirectly, (a) any Claim other than (x) an Assumed Liability or (y) a Claim against any "Purchased Company" (as such term is defined in the Purchase Agreement) or (b) any successor liability for any of the Debtors. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla)).

BB. Without limiting the generality of the foregoing, the Purchase Agreement provides the Debtors with reasonably equivalent value and fair consideration (as those terms are defined in the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the Bankruptcy Code), and was not entered into for the purpose or, nor does it have the effect of, hindering, delaying or defrauding creditors of any of the Debtors under any applicable laws. Except for the Assumed Liabilities, the Sale Transaction shall not impose or result in the imposition of any liability or responsibility on Purchaser or its affiliates, successors or assigns or

any of their respective assets (including the Purchased Assets), and the transfer of the Purchased Assets to the Purchaser does not and will not subject the Purchaser or its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), to any liability for any Claims, including, without limitation, for any successor liability or any products liability for the sale of any vehicles by the Debtors or their predecessors or affiliates, except as expressly identified as an Assumed Liability.

ASSUMPTION AND ASSIGNMENT OF THE ASSUMED AGREEMENTS

CC. The assumption and assignment of the Assumed Agreements are integral to the Purchase Agreement, are in the best interests of the Debtors and their estates and represent the reasonable exercise of the Debtors' sound business judgment. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of David Curson); May 28, 2009 Hearing Tr. (Testimony of Peter Grady); May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); May 28, 2009 Hearing Tr. (Testimony of James Chapman)).

DD. With respect to each of the Assumed Agreements, the Debtors have met all requirements of section 365(b) of the Bankruptcy Code. Further, the Purchaser has provided all necessary adequate assurance of future performance under the Assumed Agreements in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla)). Accordingly, the Assumed Agreements can be assumed by the Debtors and assigned to the Purchaser, as provided for in the Contract Procedures set forth in the Bidding Procedures Order, the Sale Motion and the Purchase Agreement. The Contract Procedures are fair, appropriate and effective and, upon the payment by the Purchaser of all Cure Costs (which costs are the sole obligation of the Purchaser under the Purchase Agreement) and the payment of such other obligations assumed pursuant to this Sale Order and approval of the

assumption and assignment for a particular Assumed Agreement thereunder, the Debtors shall be forever released from any and all liability under the Assumed Agreement.

EE. The Purchaser has acknowledged that it will be required to comply with the National Traffic and Motor Vehicle Safety Act, as amended and recodified ("NTMVSA"), as applicable to the business of the Purchaser after the Closing Date. In addition, the Purchaser has agreed to assume as Assumed Liabilities under the Purchase Agreement and this Sale Order the Debtors' notification, remedy and other obligations under 49 U.S.C. §§ 30116 through 30120 of the NTMVSA relating to vehicles manufactured by the Debtors prior to the Closing Date that have a defect related to motor vehicle safety or do not to comply with applicable motor vehicle safety standards prescribed under the NTMVSA. The Purchaser shall not otherwise be liable for any failure by the Debtors to comply with the provisions of the NTMVSA.

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

- the Debtors are neither assuming nor assigning to the Purchaser the settlement agreement (the "2008 Settlement Agreement") between the Debtors, the UAW and certain of the Debtors' retirees, dated March 31, 2008, which was approved by the United States District Court for the Eastern District of Michigan on July 31, 2008, in the class action of *Int'l Union, UAW, et al. v. Chrysler, LLC*, Case No. 07-CV-14310 (E.D. Mich. filed Oct. 11, 2007) and established, among other things, an independent Voluntary Employee Beneficiary Association (the "VEBA") that would become responsible for retiree health care on behalf of current and future UAW retirees of the Debtors and their surviving spouses and eligible dependents (the "*English* Case VEBA") (DX 4; May 28, 2009 Hearing Tr. (Testimony of David Curson));

- the 2007 Chrysler-UAW National Agreement, including (1) the Production, Maintenance and Parts National Agreement, (2) the Engineering Office & Clerical National Agreement, (3) the Toledo Assembly Plant/Jeep Unit, Local 12 Agreement, (4) Daimler Chrysler Financial Services North America, LLC (Farmington) and (5) Daimler Chrysler Financial Services North America, LLC (Detroit), and all appendices, memoranda of understanding, supplemental agreements, local agreements and benefit plans, as modified effective April 30, 2009 (the "UAW CBA"), shall be assumed by the Debtors and assigned to the Purchaser pursuant to this Sale Order and section 365 of the Bankruptcy

Code. Assumption and assignment of the UAW CBA is integral to the Sale Transaction and the Purchase Agreement, is in the best interests of the Debtors and their estates, creditors, employees and retirees and represent the reasonable exercise of the Debtors' sound business judgment (See May 28, 2009 Hearing Tr. (Testimony of David Curson));

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of UAW-represented retirees of the Debtors under section 1114(c) of the Bankruptcy Code, and the Purchaser engaged in good faith negotiations in conjunction with the Sale 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 Sale Transaction and the assumption and assignment of the UAW CBA, the UAW and the Purchaser have entered into a Retiree Settlement Agreement (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 to the *English* Case VEBA. 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) (See DX 4; May 28, 2009 Hearing Tr. (Testimony of David Curson)); and

- the Debtors' sponsorship of the Internal Existing VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the Purchase Agreement (See DX 64, at § 6.08).

VALIDITY OF THE TRANSFER

GG. As of the closing of the Sale Transaction (the "Closing"), the transfer of the Purchased Assets to the Purchaser will be a legal, valid and effective transfer of the Purchased Assets, and will vest the Purchaser with all right, title and interest of the Debtors in and to the Purchased Assets, free and clear of all Claims other than Assumed Liabilities.

HH. With the entry of this Sale Order, the Debtors (1) have full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtors; (2) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; (3) have taken all actions necessary to

authorize and approve the Purchase Agreement and the consummation by the Debtors of the transactions contemplated thereby; and (4) upon entry of this Sale Order, need no consents or approvals, other than those expressly provided for in the Purchase Agreement, which may be waived by the Purchaser, to consummate such transactions. (See DX 38; DX 64 at Art. IV-A).

II. To the extent that the right, title and interest of the Debtors in and to any of the Purchased Assets ultimately is transferred to the Purchaser after the Closing pursuant to a plan of reorganization confirmed in these chapter 11 cases, such transfer shall be deemed a transfer pursuant to section 1146 of the Bankruptcy Code and shall not be taxed under any law imposing a stamp, transfer or any other similar tax.

PERSONALLY IDENTIFIABLE INFORMATION

JJ. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as such term is defined by section 101(41A) of the Bankruptcy Code) in the operation of their businesses. The Debtors propose to sell certain assets containing personally identifiable information in a manner that is not in compliance with their current existing privacy policies. As such, in the Bidding Procedures Order, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and Alan Chapell, CIPP (the "Privacy Ombudsman") was appointed as a consumer privacy ombudsman under section 332 of the Bankruptcy Code on May 11, 2009 (Docket No. 594). 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 May 28, 2009 (Docket No. 2790) (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 (1) facts, (2) exigent circumstances surrounding and (3) the conditions of the sale of personally identifiable information in connection with the

Sale Transaction, including as set forth in the Ombudsman Report. No showing has been made that the sale of personally identifiable information in connection with the Sale Transaction violates applicable non-bankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the Sale Transaction.

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

GENERAL PROVISIONS

1. The Sale Motion is granted in its entirety and entry into and performance under and in respect of the Purchase Agreement and the Sale Transaction is approved, as set forth in this Sale Order.

2. The findings of fact and conclusions of law set forth in the Court's Opinion, dated May 31, 2009 (Docket No. 3073), as supplemented by the findings of fact stated above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

3. All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice, except as expressly provided herein. Attached hereto as Exhibit B is a summary schedule of filed objections and the treatment of each.

Exhibit 8 (part 2 of 2)

APPROVAL OF THE PURCHASE AGREEMENT

4. The Purchase Agreement, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved, subject to the terms and conditions of this Sale Order to the extent of any express conflict herewith. In the event of any direct conflict between the terms and conditions of the Purchase Agreement and those of this Sale Order as in effect at the Closing Date, the terms and conditions of this Sale Order shall govern, provided that no change to this Sale Order made after the Closing Date without the consent of the Purchaser shall affect the rights or obligations of the Purchaser arising out of or relating to the Purchase Agreement in any manner.

5. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under and comply with the terms of the Purchase Agreement and consummate the Sale Transaction, pursuant to and in accordance with the terms and conditions of the Purchase Agreement and this Sale Order.

6. The Debtors, as well as their affiliates, officers, employees and agents, are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, in substantially the same form as the Purchase Agreement attached hereto as Exhibit A, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions and execute such other documents as may be (a) reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession, the Purchased Assets (including, but not limited to, all necessary transition services to be provided to the Purchaser by the Debtors), (b) necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement and (c) as may be reasonably requested by Purchaser to implement the Purchase Agreement and

consummate the Sale Transaction in accordance with the terms thereof, all without further order of the Court.

7. This Sale Order and the Purchase Agreement shall be binding in all respects upon the Purchaser, the Debtors, their affiliates, any trustees appointed in the Debtors' cases (whether under chapter 11 or chapter 7 of the Bankruptcy Code), all creditors (whether known or unknown) of any Debtors, all interested parties and their successors and assigns, including, but not limited to, any party asserting a Claim and any Non-Debtor Counterparty to the Assumed Agreements. Nothing contained in any chapter 11 plan confirmed in these bankruptcy cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the Purchase Agreement or this Sale Order, and to the extent of any conflict or derogation between this Sale Order or the Purchase Agreement and such future plan or order, the terms of this Sale Order and the Purchase Agreement shall control to the extent of such conflict or derogation.

8. All amounts, if any, to be paid by Debtors' pursuant to the Purchase Agreement shall constitute administrative expenses pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code and shall be due and payable if and when any Debtors' obligations arise under the Purchase Agreement without further order of the Court.

TRANSFER OF PURCHASED ASSETS FREE AND CLEAR

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Purchased Assets in accordance with the terms of the Purchase Agreement. The Purchased Assets shall be transferred to the Purchaser, and upon consummation of the Purchase Agreement, such transfer (a) shall be a valid, legal, binding and effective transfer; (b) shall vest the Purchaser with all right, title and interest of the Debtors in the Purchased Assets; and (c) shall be free and clear of all Claims except for

Assumed Liabilities with all such Claims to attach to the proceeds of the Sale Transaction ultimately attributable to the Purchased Assets against or in which such Claims are asserted, or other specifically dedicated funds, in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

10. In connection with the transfer of the Purchased Assets to the Purchaser (a) the Debtors are authorized and directed to execute, deliver and perform their obligations under the First Priority Consent, including by indefeasibly paying, or causing the indefeasible payment of, immediately upon consummation of such transfer of the Purchased Assets, $2 billion in immediately available funds to the First Priority Agent to be applied as set forth in the First Priority Consent; and (b) Wilmington Trust Company as Collateral Trustee under the CTA is authorized and directed to comply with the Direction Letter dated as of May 27, 2009 delivered to it by the First Priority Agent as "Controlling Party" under the CTA, including by executing and delivering such documents as are necessary to permit the transfer of the Purchased Assets free and clear of liens on the Purchased Assets held by Wilmington Trust Company as Collateral Trustee under the CTA.

11. Notwithstanding paragraph 15 below or anything to the contrary in this Sale Order or the Purchase Agreement, (a) any Purchased Asset that is subject to any mechanics', carriers', workers', repairers', shippers', marine cargo, construction, toolers', molders' or similar lien or any statutory lien on real and personal property for property taxes not yet due 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 Petition Date (or becomes valid, perfected and enforceable after the Petition 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 Sale Order or the Purchase Agreement 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 Sale Order or the Purchase Agreement 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 the type (or amount), if any, of required adequate protection.

12. Except as otherwise provided in the Purchase Agreement, all persons and entities (and their respective successors and assigns), including, but not limited to, all debt security holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, dealers, employees, trade creditors, litigation claimants and other creditors, holding Claims (whether legal or equitable, secured or unsecured, known or unknown, matured

or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated) except for Assumed Liabilities or Claims against any Purchased Company, arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Business prior to Closing or the transfer of the Purchased Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting such Claims against the Purchaser, its successors or assigns, its property or the Purchased Assets. No such persons or entities shall assert against the Purchaser or their successors in interest any Claim arising from, related to or in connection with the ownership, sale or operation of any Asset prior to the Closing, except for Assumed Liabilities.

13. This Sale Order (a) shall be effective as a determination that, as of the Closing, (i) no Claims other than (x) Assumed Liabilities relating to the Purchased Assets or (y) Claims against any Purchased Company, will be assertable against the Purchaser, its affiliates, 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 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 hereby directed to accept for filing any and all of the documents and

instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

14. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Claims against or in the Debtors or the Purchased Assets shall not have delivered to the Debtors prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests that the person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then only with regard to Purchased Assets that are purchased by the Purchaser pursuant to the Purchase Agreement and this Sale Order (a) the Debtors are hereby 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 Purchased Assets; and (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the applicable Purchased Assets other than the Assumed Liabilities. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office.

15. All persons or entities in possession of some or all of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of the Closing of the Sale Transaction.

16. Following the Closing of the Sale Transaction, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based

on or related to any such Claim, or based on any actions the Debtors may take in their chapter 11 cases.

17. 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 Purchase Agreement and this Sale Order.

18. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license 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 Sale Transaction contemplated by the Purchase Agreement.

19. Notwithstanding anything else contained herein or in the Purchase Agreement, in connection with the purchase of the Debtors' brands and related Purchased Assets, the Purchaser, from and after the Closing, will recognize, honor and pay liabilities under Lemon Laws for additional repairs, refunds, partial refunds (monetary damages) or replacement of a defective vehicle (including reasonable attorneys' fees, if any, required to be paid under such Lemon Laws and necessarily incurred in obtaining those remedies), and for any regulatory obligations under such Lemon Laws arising now, including but not limited to cases resolved prepetition or in the future, on vehicles manufactured by the Debtors in the five years prior to the Closing (without extending any statute of limitations provided under such Lemon Laws), but in any event not including punitive, exemplary, special, consequential or multiple damages or penalties and not including any claims for personal injury or other consequential damages that may be asserted in relationship to such vehicles under the Lemon Laws. As used herein, "Lemon Law" means a federal or state statute, including, but not limited to, claims under the Magnuson-

Moss Warranty Act based on or in conjunction with a state breach of warranty claim, requiring a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty after a reasonable number of attempts as defined in the applicable statute. In connection with the foregoing, the Purchaser has agreed to continue addressing Lemon Law claims (to the extent that they are Assumed Liabilities) using the same or substantially similar procedural mechanisms previously utilized by the Debtors.

20. The Purchased Owned Real Property and PP&E (as such terms are defined in the Purchase Agreement) that, as of the Closing, are subject to existing statutory liens or any liens that may be created or perfected in accordance with section 362(b)(18) of the Bankruptcy Code shall be transferred to the Purchaser subject to (a) any applicable property taxes for the tax year 2009 (collectively, the "2009 Property Taxes") owed to state and local taxing authorities in the United States (collectively, the "Relevant Taxing Authorities") and (b) any liens related to such 2009 Property Taxes. The 2009 Property Taxes shall be paid by the Purchaser; however, as between the Purchaser and the Debtors such 2009 Property Taxes shall be prorated as of the Closing Date and settled upon receipt of the relevant property tax bills. The Relevant Taxing Authorities shall bill their 2009 Property Taxes to the Purchaser in the ordinary course, not as an expedited or jeopardy assessment.

21. The Debtors shall deposit designated funds in the amount of $63 million in a dedicated escrow account (the "Tax Escrow") to satisfy sales and use taxes, Michigan business taxes and other taxes owed to the Relevant Taxing Authorities in respect of any of the Debtors (including predecessors of the Debtors) and not covered by paragraph 20 above, to the extent such taxes are (a) secured taxes or may become secured by liens that may be created or perfected in accordance with section 362(b)(18) of the Bankruptcy Code or (b) of the nature authorized to

be paid under the Order, Pursuant to Sections 105(a), 363(b), 507(a) and 541 of the Bankruptcy Code, Authorizing the Debtors and Debtors in Possession to Pay Certain Prepetition Taxes (Docket No. 355) to the extent such taxes were or may be asserted or assessed against individuals (collectively, the "Additional Taxes"). Any Claims for Additional Taxes shall attach to, and be satisfied from, the Tax Escrow.

22. (a) Notwithstanding any contrary provision of this Sale Order or the Purchase Agreement, the 61 Vehicles, as described and defined in the response of Wilmington Trust Company to the Sale Motion (Docket No. 1188), will be treated as Excluded Assets that will not be transferred to the Purchaser.

(b) Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, the Debtors' assumption and assignment to the Purchaser of all of the Debtors' right, title and interest in or under the Debtors' guaranteed depreciation program agreement and ancillary agreements related thereto (collectively, the "GDP Agreement") with Dollar Thrifty Automotive Group, Inc. and its affiliates (collectively, "DTAG") are hereby approved, and all requirements of section 365 of the Bankruptcy Code are hereby deemed satisfied as of the date of, and effective only upon, the Closing of the Sale Transaction. DTAG has consented to such assumption and assignment and agrees that, subject to payment of Cure Costs, such assumption and assignment shall not constitute an event of default thereunder or permit the termination thereof. The Debtors and DTAG shall confer in good faith to determine the amount of the Cure Costs to be paid under the GDP Agreement. If the Debtors and DTAG are unable to reach a resolution of such cure cost amount, either of such parties may apply to the Court for an order, upon notice and a hearing, determining the correct Cure Cost amount.

(c) All obligations of Chrysler LLC under the GMAC MAFA Term Sheet (the "GMAC Term Sheet") attached to the Purchase Agreement as Exhibit A, or if executed, the definitive GMAC Master Autofinance Agreement, which agreement shall be substantially on the same terms as the GMAC Term Sheet or the Annexes thereto, as well as any intellectual property licensing agreements entered into connection therewith and all the other agreements that are specified in the GMAC Term Sheet, including, without limitation, one or more repurchase agreements with substantially the same terms as set forth in Annex D to Exhibit A of the Purchase Agreement (collectively with the GMAC Term Sheet, the "GMAC MAFA Documents") shall be assigned by the Debtors to the Purchaser, and the Purchaser shall be deemed to have assumed the GMAC MAFA Documents, pursuant to this Sale Order and the Bidding Procedures Order, and each non-Debtor party to the GMAC MAFA Documents shall be deemed to have consented to such assumption and assignment. Assumption and assignment of the GMAC MAFA Documents are integral to the Sale Transaction and the Purchase Agreement, are in the best interests of the Debtors and their estates, creditors, employees and retirees and represent the reasonable exercise of the Debtors' sound business judgment.

(d) At the Purchaser's written election, to be made by notice to Chrysler Financial Services Americas LLC ("Chrysler Financial") no later than June 12, 2009, or such other date as the Purchaser and Chrysler Financial may agree, either: (i) (A) the vehicles related to unperformed or partially unperformed repurchase obligations arising from or related to agreements between the Debtors and dealers whose dealerships were terminated prepetition, or arising from or related to prepetition agreements between Chrysler Financial and the Debtors (collectively, the "Repurchased Vehicles"), and (B) the vehicles commonly referred to by Chrysler Financial and the Debtors as "conversion vehicles" that are currently in the possession

of entities that convert such vehicles into "conversion vehicles" (together with Repurchased Vehicles, the "Conversion and Repurchased Vehicles"), will be treated as "Excluded Assets" that will not be transferred to the Purchaser; or (ii) will be treated as Purchased Assets and the alleged liens in favor of Chrysler Financial or its affiliates on the Conversion and Repurchased Vehicles will be Continuing Liens to the extent they meet the requirements of subparagraphs 11(a)(i) through (iii) above.

(e) Chrysler Financial and its affiliates object to the sale to the Purchaser of any insurance policy, surety bond or related indemnity arrangement to the extent that it (i) is an executory contract to extend a financial accommodation or a personal services contract and therefore not assumable and assignable to the Purchaser pursuant to section 365(c)(1) or (c)(2) of the Bankruptcy Code or (ii) is property the sale of which is not permitted under state or contract law and that entitles Chrysler Financial and its affiliates to adequate protection pursuant to section 363(e) of the Bankruptcy Code or that may not be sold free and clear of the interests of Chrysler Financial and its affiliates pursuant to section 363(f) of the Bankruptcy Code. The parties reserve all rights (including, without limitation, any rights under the Contract Procedures and, in the case of the Purchaser, any rights against the Debtors pursuant to Sections 2.11 and 2.12 of the Purchase Agreement) and agree that no such policy, bond or arrangement shall be deemed to be transferred to Purchaser and that no liens, rights of setoff, equitable subrogation or equitable lien arising in favor of Chrysler Insurance Company, as insurer or surety, as against any Debtor's estate shall be terminated, diminished or affected by reason of any provision of the Purchase Agreement or this Sale Order until such objections are resolved by the Court.

23. Nothing in this Sale Order or in the Purchase Agreement releases, nullifies or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order.

APPROVAL OF UAW RETIREE SETTLEMENT AGREEMENT

24. The UAW Retiree Settlement Agreement, all transactions contemplated therein and all of the terms and conditions thereof are fair, reasonable and in the best interests of the retirees and are hereby approved. The Debtors, the Purchaser and the UAW are authorized to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and comply with the terms of the UAW Retiree Settlement Agreement pursuant to and in accordance with the terms and conditions of the UAW Retiree Settlement Agreement and this Sale Order. The Trust Amendments are hereby approved and the *English Case* VEBA Trust Agreement is reformed accordingly (as such terms are defined in the UAW Retiree Settlement Agreement).

ASSUMPTION AND ASSIGNMENT OF ASSUMED AGREEMENTS

25. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and in accordance with the Contract Procedures, the Debtors' assumption and assignment or other transfer to the Purchaser of all of the Debtors' right, title and interest in or under the Assumed Agreements are hereby approved, with only such exceptions as Purchaser may agree in writing, and all requirements of section 365 of the Bankruptcy Code are hereby deemed satisfied. For the avoidance of doubt, subject to the Contract Procedures (including the resolution of any Section 365 Objection and the issuance of a Confirmation Notice, as set forth in the Bidding Procedures Order), the Debtors shall be deemed to have assumed and assigned each of the Assumed Agreements as of the date of and effective only upon the Closing of the Sale Transaction and,

absent such Closing, each of the Assumed Agreements shall neither be deemed assumed nor assigned and shall in all respects be subject to subsequent assumption or rejection by the Debtors under the Bankruptcy Code.

26. Except as provided herein, the Debtors are hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code and the Contract Procedures to assume and assign, sell and otherwise transfer the Assumed Agreements of all of the Debtors' right, title or interest therein or thereunder to the Purchaser free and clear of all Claims, and to execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Agreements to the Purchasers.

27. In accordance with the Contract Procedures, the Assumed Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Agreement (including those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There shall be no rent accelerations, assignment fees, penalties, increases or any other fees charged to the Purchaser or the Debtors as a result of the assumption or assignment of the Assumed Agreements. No Assumed Agreement may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the transactions contemplated by the Purchase Agreement.

28. To the extent that the Purchaser exercises its right to exclude any Assumed Agreement from the Sale Transaction prior to the applicable Agreement Assumption Date, such Assumed Agreement shall (a) be deemed never to have been assumed by the Debtors or assigned

to the Purchaser and (b) remain subject to assumption, rejection or assignment by the Debtors at any time in the future.

29. Except as may be otherwise agreed to by the parties to an Assumed Agreement, the Cure Costs under the Assumed Agreements shall be paid by the Purchaser as soon as practicable and in no event later than ten days after the later of (a) the Closing of the Sale Transaction or (b) following the date on which such Assumed Agreement is deemed assumed and assigned in accordance with the Contract Procedures. With respect to Disputed Cure Costs, the Purchaser shall reserve sufficient funds to pay the full amount of any Disputed Cure Costs related to the Sale Transaction until such time as there is a resolution among the parties or a final order of this Court determining the correct Cure Costs. In addition to the Cure Costs (but without duplication), the Purchaser will assume and pay, in the ordinary course of business and as they come due, all amounts for goods delivered and services provided prepetition for which payment was not due as of the Petition Date and for postpetition goods delivered and services provided to the Debtors under each Assumed Agreement to the extent due and payable and not otherwise paid by the Debtors.

30. Payment of the Cure Costs shall be a full satisfaction of any and all defaults under the Assumed Agreements, whether monetary or non-monetary, and upon payment of the Cure Costs any default of the Debtors thereunder shall have been irrevocably cured. Upon the assumption and assignment of an Assumed Agreement under the Contract Procedures, the Debtors shall be released from any liability whatsoever arising under the Assumed Agreements and the Cure Costs and ongoing obligations under the Assumed Agreement shall be solely the obligation of the Purchaser. Except as otherwise provided in this Sale Order, each Non-Debtor Counterparty to an Assumed Agreement hereby is forever barred, estopped and

permanently enjoined from asserting against the Debtors or the Purchaser, their successors or assigns or the property of any of them, any default existing as of the date of the assumption of the Assumed Agreement.

31. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Agreement shall not be a waiver of such terms or conditions, or of the Debtors' and the Purchaser's rights to enforce every term and condition of the Assumed Agreements.

32. Upon the Agreement Assumption Date (or such earlier date as set forth in the Contract Procedures), the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assumed Agreements.

33. The assignments of each of the Assumed Agreements are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

34. In connection with the foregoing and consistent with the Contract Procedures, the Purchaser and the Creditors' Committee have agreed to the following: (a) no later than the second calendar day after the initial Section 365 Objection Deadline, the Purchaser will serve Confirmation Notices on the applicable Non-Debtor Counterparties; (b) no later than the second calendar day after the initial Section 365 Hearing, the Purchaser will serve additional Confirmation Notices on the applicable Non-Debtor Counterparties; (c) the Purchaser and the Creditors' Committee acknowledge that, if the Closing occurs prior to June 12, 2009, the terms of the Contract Procedures provide that the Assurance Letter procedure will not apply; and (d) paragraph 20 of the Bidding Procedures Order is clarified to provide that all Designated Agreements (rather than all contracts) that have not become Confirmed Contracts as of the Closing Date shall constitute "Excluded Contracts" for purposes of the Purchase Agreement

(without any requirement to update the Company Disclosure Letter) unless such Designated Agreements subsequently become Confirmed Contracts in accordance with the Contract Procedures. The failure of the Purchaser to deliver a Confirmation Notice with respect to any Non-Debtor Counterparty as contemplated in clause (a) and (b) of this paragraph 34, whether because the parties have not agreed to Cure Costs or otherwise, shall not preclude the ability of the Purchaser to deliver a Confirmation Notice to such Non-Debtor Counterparty after such time and prior to the "Final Designation Date" (as defined in the Bidding Procedures Order).

ADDITIONAL PROVISIONS

35. Except for the Assumed Liabilities expressly set forth in the Purchase Agreement or described therein or Claims against any Purchased Company, none of the Purchaser, its successors or assigns or any of their respective affiliates shall have any liability for any Claim that (a) arose prior to the Closing Date, (b) relates to the production of vehicles prior to the Closing Date or (c) 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 Purchase Agreement or any of the transactions or documents ancillary thereto or contemplated thereby or the acquisition of the Purchased Assets, to: (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Assumed Agreements from and after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) 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, derivative or vicarious liabilities of any kind or character for any Claims, including, but not limited to, on any theory of successor or transferee liability, *de facto* merger or continuity, environmental, labor and employment,

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.

36. The Purchaser (or its designee) is authorized and directed, in accordance with Section 5.20 of the Purchase Agreement, to substitute, backstop or replace, as the case may be, in a manner reasonably satisfactory to the Debtors, those letters of credit existing as of the Closing that secure future obligations of the Purchaser under an Assumed Agreement and are identified in writing by the Debtors as part of the Cure Costs. The Purchaser shall cause the originals of any such substituted or replaced letters of credit to be returned to the Debtors or the issuer thereof with no further drawings made thereunder.

37. The Purchaser is hereby granted a first priority lien and super-priority administrative claim over the proceeds of any tax refunds (including interest thereon), returns of withholding taxes or similar payments, and any proceeds of tax sharing, contribution or similar agreements (in each case, other than on refunds due to be paid to third parties pursuant to the Original Contribution Agreement, as defined in the Purchase Agreement) to secure the payment of all amounts due to the Purchaser from any of the Debtors under the tax indemnities in Article 9 of the Purchase Agreement.

38. Effective upon the Closing and except as otherwise set forth herein or provided by stipulations filed with or announced to the Court with respect to a specific matter, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Purchased Assets, with respect to any (a) Claim other than (i) Assumed Liabilities or (ii) Claims against any Purchased Company or (b) successor liability of the Purchaser for any of the Debtors, including,

without limitation, the following actions with respect to clauses (a) and (b): (i) 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; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors as against the Purchaser or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (iii) 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; (iv) asserting any setoff, right of subrogation or recoupment of any kind (in the case of recoupment only, except as a defense for payment of an obligation other than an Assumed Agreement) 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; (v) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof; or (vi) 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.

39. Except for the applicable Assumed Liabilities, the Purchaser shall not have any liability or other obligation of the Debtors or their affiliates arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Purchase Agreement, the Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Purchaser shall have no successor 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 Debtors or their affiliates or any obligations of the Debtors or their affiliates arising prior to the Closing, including, but not limited to, 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 the Purchased Assets prior to the Closing of the Sale Transaction.

40. Upon the Debtors' assignment of the Assumed Agreements to the Purchaser under the provisions of this Sale Order and any additional order contemplated by the Purchase Agreement, no default shall exist under any Assumed Agreement, and no counterparty to any Assumed Agreement shall be permitted to declare a default by the Purchaser under such Assumed Agreement or otherwise take action against the Purchaser as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the relevant Assumed Agreement.

41. For the avoidance of doubt:

(a) with respect to each Excluded Contract, the Purchaser is not acquiring any right, title or interest in, to and under such Excluded Contract, including without limitation any claim, cause of action, right of recoupment or receivable (whether for money or property), and all rights of a Non-Debtor Counterparty against the Debtors arising under such Excluded Contract, including rights of setoff, are not modified or waived;

(b) with respect to each Assumed Agreement, nothing in this Sale Order or the Purchase Agreement affects the contractual rights and remedies of a Non-Debtor Counterparty under such Assumed Agreement, including, without limitation, any right of setoff, recoupment, subrogation, indemnity rights and any defenses to performance, except to the extent such contractual rights and remedies result from the financial condition or bankruptcy of a Debtor or arise out of or relate to a default or failure to perform under such Assumed Agreement at or prior to the time of assumption and assignment;

(c) with respect to Purchased Assets (whether Assumed Agreements or other Purchased Assets such as Claims and receivables), nothing in this Sale Order or the Purchase Agreement affects any other defense or right of the non-Debtor obligor under applicable law, *provided that* a non-Debtor obligor may not assert any setoff, recoupment or other right or defense to the extent (a) resulting from the financial condition or bankruptcy of a Debtor or arising out of or relating to a default or failure to perform under such Assumed Agreement at or prior to the time of assumption and assignment or (b) arising out of or relating to an Excluded Liability; and

(d) with respect to leases, nothing in this Sale Order or the Purchase Agreement shall (a) affect the rights of any lessor of property leased by a Debtor under an unexpired lease except to the extent such unexpired lease becomes an Assumed Agreement in accordance with the Contract Procedures and applicable law, (b) sell to the Purchaser any leased property not owned by a Debtor or (c) with respect to leases that are Excluded Contracts, affect possessory or ownership rights as against any Debtor or the Purchaser.

42. The Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of Claims. The discrete consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of any Claims of any kind whatsoever.

43. While the Debtors' bankruptcy cases are pending, this Court shall retain jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith in all respects), to adjudicate disputes related to this Sale Order or the Purchase Agreement and to enter any orders under sections 105, 363 and/or 365 (or other relevant provisions) of the Bankruptcy Code with respect to the Assumed Agreements.

44. Nothing in this Sale Order or the Purchase Agreement releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental statutes or

regulations (or any associated liabilities for penalties, damages, cost recovery or injunctive relief) that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order. Notwithstanding the foregoing sentence, nothing in this Sale 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 statutes or regulations for penalties for days of violation prior to entry of this Sale Order or for liabilities relating to off-site disposal of wastes by the Debtors prior to entry of this Sale Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

45. No bulk sales law, or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion and this Sale Order.

46. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction (including the assumption and assignment of the Assumed Agreements), unless such authorization is duly stayed pending such appeal.

47. The consideration provided by the Purchaser for the Purchased Assets constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and 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 the foregoing.

48. The Sale Transaction may not be avoided under section 365(n) of the Bankruptcy Code.

49. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, their creditors, the Purchaser, the respective affiliates, successors and assigns of each, and any affected third parties, including, but not limited to, all persons asserting claims in the Purchased Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s), examiner(s) or receiver(s) under any chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee(s), examiner(s) or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, their shareholders or any trustee(s), examiner(s), or receiver(s).

50. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement and its exhibits and ancillary documents be authorized and approved in their entirety.

51. The Purchase Agreement may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not materially change the terms of the Purchase Agreement or modify the express terms of this Sale Order.

52. Each and every federal, state and local governmental agency, department or official is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

53. Subject to further order of the Court and consistent with the terms of the Purchase Agreement 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, 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' businesses.

54. Consistent with the terms of the Purchase Agreement and the Transition Services Agreement, the Debtors have agreed to transfer to the Purchaser (or one or more of its subsidiaries, as applicable) a substantial portion of the Debtors' cash management system maintained pursuant to an order of this Court (Docket No. 1303) entered on May 20, 2009, including, without limitation, several bank accounts maintained by the Debtors. Such cash management system assets, including such bank accounts, constitute Purchased Assets under the Purchase Agreement. Notwithstanding the foregoing transfers, the Debtors will maintain such bank accounts and a cash management system that is necessary to effect the orderly administration of the Debtors' chapter 11 estates, including any modifications thereof after the Closing, to ensure a reasonable accounting and segregation of the Debtors' cash To the extent any funds of the Debtors that do not constitute Purchased Assets are held in accounts transferred to the Purchaser (or one or more of its subsidiaries), such funds shall be promptly returned to the appropriate Debtor, and such funds shall remain subject to any and all liens of the Debtors'

lienholders thereon. Likewise, to the extent that any funds that constitute Purchased Assets are held in accounts maintained by one or more Debtors after the Closing, such funds shall be promptly transferred to the Purchaser. The applicable Debtors and the Purchaser (and/or one or more of its subsidiaries, as applicable), may execute any agreement, assignment, novation, instrument or other document the parties deem necessary or appropriate to effectuate the transfers described in this paragraph, which is consistent with the general authority to the same provided in paragraph 6 hereof.

55. Those powers of attorney granted by Chrysler LLC and any of the other Debtors and any related documentation entered into by such entities for the purpose of (a) effectuating the transfers of such entities' interests in their non-debtor foreign affiliates to the Purchaser, Chrysler Motors LLC or their respective designees in connection with consummation of the Sale Transaction or (b) effectuating the transfers of interests in certain foreign affiliates to Chrysler LLC or any of the other Debtors prior to consummation of the Sale Transaction are here by ratified and approved in all respects, regardless of whether such powers of attorney or other documentation were issued or entered into prior to or subsequent to the Petition Date.

56. The Debtors are hereby authorized and empowered, upon and in connection with the Closing, to change their corporate names and the caption of these chapter 11 cases, consistent with applicable law. The Debtors shall file a notice of change of case caption within one business day of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

57. As provided by Bankruptcy Rules 6004(h) and 6006(d), this Sale Order shall not be stayed for ten days after its entry and shall be effective as of 12:00 noon, Eastern Time, on Friday June 5, 2009, and the Debtors and the Purchaser are authorized to close the Sale

Transaction on or after 12:00 noon, Eastern Time, on Friday June 5, 2009.[4] Any party objecting to this Sale Order must exercise due diligence in filing an 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 Sale Order becoming a Final Order.

58. Any amounts payable to the Purchaser shall be paid by the Debtors in the manner provided in the Purchase Agreement without further order of this Court, shall be an allowed administrative claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code, shall be protected as provided in the Bidding Procedures Order and shall not be altered, amended, discharged or affected by any plan proposed or confirmed in these cases without the prior written consent of the Purchaser.

59. This Court retains jurisdiction to interpret, implement and enforce the terms and provisions of this Sale Order including to compel delivery of the Purchased Assets, to protect the Purchaser against any Claims and to enter any orders under sections 105, 363 or 365 (or other applicable provisions) of the Bankruptcy Code to transfer the Purchased Assets and the Assumed Agreements to the Purchaser.

Dated: New York, New York
June 1, 2009

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

[4] The Court considered the Debtor's request for a waiver of the stay imposed, pursuant to Bankruptcy Rules 6004(h) and 6006(d), objections filed to that request, and Debtors' modified request as of June 1, 2009, whereby Debtors' sought a waiver of the stay imposed to permit a closing to take place on Thursday, June 4, 2009 at 9:00 a.m. In their modified request, the Debtors reference the deposition testimony of Matthew Feldman, an advisor to the President's Auto Task Force, indicating that the Debtors are losing $100 million a day, and the other exigent circumstances facing Chrysler, including the continuing deterioration of its asset value, its supply chain, and its going-concern value. The Court determines that a partial waiver of the stay is justified. Any request to further modify the stay should be made to the appellate court.

Exhibit 9

Slip Copy, 2010 WL 1416749 (E.D.Cal.)
(Cite as: 2010 WL 1416749 (E.D.Cal.))

HOnly the Westlaw citation is currently available.

United States District Court,
E.D. California.
Daniel Stacey WINN, individually and as successor in interest to Petra Monika Winn, deceased, Kory Michael Winn, individually and as successor in interest to Petra Monika Winn, deceased, Breeonna Winn, individually and as successor in interest to Petra Monika Winn, deceased, Erika Winn, individually and as successor in interest to Petra Monika Winn, deceased,
Plaintiffs,
v.
CHRYSLER GROUP, LLC, a Delaware corporation, successor in interest to Daimler Chrysler Corporation; Magna Powertrain, Inc.; Magna International of America, Inc., also known as Magna Powertain; Great Valley Chrysler Jeep, an unknown business entity; Enterprise Rent-a-Car Company, a California corporation; S.J. Denham, Inc., a California corporation, Deborah Matisengle; et al., Defendants.
No. 2:09-cv-02805-MCE-GGH.

April 8, 2010.

R. Ben Hogan, PHV, Hogan Law Office, P.C., Birmingham, AL, Todd Everitt Slaughter, Reiner, Simpson and Slaughter, Redding, CA, for Plaintiffs.

John Garland Gherini, Wayne Allen Wolff, Sedgwick, Detert, Moran & Arnold LLP, Stephen S. Walters, Allen Matkins Leck Gamble Mallory & Natsis LLP, San Francisco, CA, Audrey Ann Smith, Howie & Smith, LLP, San Mateo, CA, for Defendants.

ORDER

MORRISON C. ENGLAND, JR., District Judge.

***1** By Memorandum and Order filed December 24, 2009, this Court granted Plaintiffs' Motion to Remand the above-captioned matter back to the Superior Court of the State of California in and for the County of Shasta for further adjudication. On December 31, 2009, Defendant Chrysler Group, LLC ("Chrysler") submitted an Ex Parte Application asking that the remand order be stayed in order to permit further briefing. That request was granted on January 29, 2010, with the Court staying this matter pending its adjudication of a Motion for Reconsideration. Now before the Court is that reconsideration request, filed February 10, 2010.

A court should not revisit its own decisions unless extraordinary circumstances show that its prior decision was clearly erroneous or would work a manifest injustice. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988). This principle is generally embodied in the law of the case doctrine. That doctrine counsels against reopening questions once resolved in ongoing litigation. *Pyramid Lake Paiute Tribe of Indians v. Hodel*, 882 F.2d 364, 369 (9th Cir.1989). Nonetheless, in certain limited situations the court may reconsider its prior decisions.

Reconsideration may be appropriate where 1) the court is presented with newly discovered evidence; 2) the court committed clear error or the initial decision was manifestly unjust; or 3) there is an intervening change in controlling law. *See Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir.2003); *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993) (citations and quotations omitted). Local Rule 230(j) similarly requires a party seeking reconsideration to demonstrate "what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion," and "why the facts or circumstances were not shown at the time of the prior motion."

"Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Ayala v. KC Envtl. Health*, 426 F.Supp.2d 1070, 1098 (E.D.Cal.2006) (emphasis in original) (internal citations omitted). Mere dissatisfaction with the court's order, or belief that the court is wrong in its decision, are accordingly not sufficient. Reconsideration requests are addressed to the sound discretion of the district court. *Turner v. Burlington N. Santa Fe R.R., supra*, 338 F.3d at 1063.

According to Chrysler, it initially emphasized Plaintiffs' successor liability claims in opposing Plaintiffs' Motion to Remand because in Chrysler's view those claims clearly ran counter to the terms of prior bankruptcy proceedings (which approved its purchase of assets from Chrysler's predecessor in interest, Chrysler Corp. LLC) and accordingly supported the exercise of federal jurisdiction in order to safeguard the bankruptcy court's orders. The successor liability claims against Chrysler were, however, dismissed at a point after briefing on the original Motion to Remand had been completed. Given that change of circumstances, and in view of Chrysler's argument that it would not have relied so exclusively on the successor liability claims to support federal jurisdiction had it known those claims would be dismissed, the Court permitted this Motion in order to afford Chrysler the opportunity to show that a different result is indicated and that the Court should retain jurisdiction on the basis of Plaintiffs' breach of contract claims against Chrysler, alone. [FN1] Consequently, Chrysler urges that the Court reconsider its prior ruling based on facts that had not been previously adduced given the earlier complexion of this case.

> FN1. Those claims are set forth in the Sixth and Seventh Causes of Action contained within Plaintiffs' First Amended Complaint. In its December 14, 2009 Order (at 8:6-9), those claims were identified in error as the Fifth and Sixth Causes of Action.

***2** In satisfying its burden in that regard, Chrysler primarily points to the fact that in purchasing its predecessor's assets, it did not expressly assume liabilities arising from the dealership agreement reached with one of the so-called "dealer" defendants involved in this case, Great Valley Chrysler Jeep ("Great Valley").

Chrysler argues that because it can assert that defense with regard to any liability it may have with respect to Great Valley, the Court should retain jurisdiction over this entire case,[FN2] despite the fact that the lawsuit admittedly only alleges claims grounded in state law, and despite the fact Chrysler does not contest that it assumed liability with respect to the other two named dealer defendants, R.J. Denham, Inc. and Enterprise Rent-aCar Company.[FN3]

> FN2. Specifically, Chrysler states as follows: "Plaintiffs' breach of contract claims, which attempt to enforce the Great Valley Chrysler dealership agreement, are completely contrary to the Bankruptcy Court's Sale Order." Def.'s Mot., 9:23-25. As such, Chrysler maintains that the entire action belongs in federal court so that the bankruptcy court, in turn, can resolve such claims.
>
> FN3. *See* Reply, 4:3-9.

The gravamen of Chrysler's argument, then, is because any claims as to the Great Valley dealership agreement undermine the terms of the Sales Order as approved by the bankruptcy court, those claims "have a direct impact on the administration of the bankruptcy estate" and consequently fall within the bankruptcy court's "retained jurisdiction to interpret the force and effect of its Sales Order." Reply, 3:23-26.

This contention loses sight of what appears to be a relatively minor role of Great Valley in this case as a whole. As set forth in the Court's December 24, 2009 Memorandum and Order, this lawsuit is a wrongful death action which claims damages against the manufacturers/suppliers of the Chrysler vehicle driven by Plaintiffs' decedent, Petra Winn, at the time of ths subject accident.

Other named defendants include S.J. Denham, the dealership who bought the Chrysler from Enterprise Rent-a-Car and sold it to Ms. Winn, and the driver of the other vehicle involved in the accident, Deborah Matisengle. Great Valley's dealership role appears to be two layers removed from Petra Winn: the sales transaction it brokered was the initial purchase, by Enterprise. Enterprise, in turn, sold the vehicle to Denham and it was Denham that sold the car to Petra Winn herself. As indicated above, because Chrysler has already assumed the dealership agreements applicable to both Enterprise and Denham, only the first sales transaction (and the one arguably most remote from Petra Winn) falls within the purview of Chrysler's argument for invoking this Court's jurisdiction.

Under 28 U.S.C. § 1334(b), this Court has original, but not exclusive, jurisdiction over cases that either "arise under" or are "related to" bankruptcy cases under Title 11. *Mann v. GTCR Golder Rauner, LLC*, 483 F.Supp.2d 884, 894 n. 8 (D.Ariz.2007). While this Court consequently has the discretion to retain

this matter to the extent that it bears some relation to the bankruptcy proceedings of Chrysler's predecessor in interest (which it assuredly does), care must nonetheless be taken to avoid construing § 1334(b) too broadly so as to bring into federal court matters that should be left for state courts to decide. *See, e.g., In Matter of FedPak Systems, Inc.*, 80 F.3d 207, 213-14 (7th Cir.1996).

***3** As stated in its December 24, 2009 Memorandum and Order, under principles of equitable remand it is proper for this matter to be adjudicated in state court. Equitable remand focuses on the consideration of several factors: "(1) the effect of the action on the administration of the bankruptcy estate; (2) the extent to which the issues of state law predominate; (3) the difficulty of applicable state law: (4) comity; (5) the relatedness or remoteness of the action to the bankruptcy case: (6) the existence of a right to jury trial; and (7) prejudice to the party involuntarily removed from state court. *In the Matter of: Baptist Foundation of Arizona*, 2000 WL 35575676 at *7 (D.Ariz.1996), citing *Williams v. Shell Oil Co.*, 169 B.R. 684, 692 (S.D.Cal.1994).

As the Court has already explained, weighing these factors tips decisively in favor of remanding this matter back to state court. The actual debtor in bankruptcy, Chrysler Corp. LLC, is not even a party to this lawsuit. Plaintiffs' lawsuit asserts claims sounding exclusively in state law, and to the extent that bankruptcy is a potential issue at all, it affects only a single affirmative defense available to one defendant in this multiple-defendant case. The issue of bankruptcy is therefore, at best, an attenuated one. Finally, to the extent that a bankruptcy defense is appropriate as to Defendant Chrysler, there is no reason why the defense cannot be asserted in state court. State law issues clearly predominate as a whole, and trying this case together in state court, in a forum that can adjudicate this entire matter through a unitary jury trial (a procedure not normally available in bankruptcy court), clearly favors concerns of both judicial economy and comity.

The only reason advanced by Chrysler for federal jurisdiction is to allow its single federal defense as to one defendant to be adjudicated by federal court. This is not enough to counter all the other reasons which plainly favor resolution in state court. Significantly, too, Chrysler has already assumed liability for the two other dealer defendants, Denham and Enterprise, and is therefore a proper defendant in state court on the breach of contract claims in any event.[FN4]

> FN4. These circumstances alone distinguish this case from district court decisions coming to a contrary result, as cited by Chrysler and attached as Exhibits E-G to the Declaration of John Gherini filed in support of the instant Motion. In those cases, unlike the case at bar, there was no indication that Chrysler had properly assumed liability with respect to agreements inuring to the benefit of any other defendant. Moreover, the Court's review of those cases indicates that they revolve primarily around straightforward successor liability, a factor no longer at issue here given Plaintiffs' dismissal of all causes of action directly dependent on such liability.

For all the foregoing reasons, Defendant Chrysler's for Reconsideration (Docket No. 43) is DENIED.[FN5] Plaintif request that the Court assess costs against Chrysler for this Motion is, however, also DENIED. Finally, the stay on remanding this case back to Shasta County is lifted. The case is transferred and the Clerk of this Court is ordered to the file.

> FN5. Because oral argument was not of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

IT IS SO ORDERED.

E.D.Cal.,2010.
Winn v. Chrysler Group, LLC
Slip Copy, 2010 WL 1416749 (E.D.Cal.)

END OF DOCUMENT

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals, Plaintiff, v. GENERAL MOTORS, LLC, Defendant.	CASE NO. CV 10-2683 AHM (VBK) Hon. A. Howard Matz **PLAINTIFF'S OBJECTION TO EXHIBITS B AND C TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS** Hearing Date: October 11, 2010 Time: 10:00 a.m. Courtroom: 14

I. INTRODUCTION

In support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction [F.R.Civ.P. 12(b)(1)], or, Alternatively to Transfer to the Southern District of New York for Referral to the Bankruptcy Court [28 U.S.C. § 1412] ("Defendant's Motion"), Defendant General Motors, LLC has requested that the Court take judicial notice of (1) a letter dated April 23, 2010 to Robert L. Starr, Plaintiff's counsel, from Lawrence S. Buonomo, General Motors Company Legal Staff (attached as Exhibit B to its Request for Judicial Notice in Support of Defendant's Motion ["Request for Judicial Notice"]) and (2) a letter dated May 27, 2010 from Robert L. Starr to Lawrence Buonomo (attached as Exhibit B to its Request for Judicial Notice) (collectively, the "Exhibits").

Neither of these two Exhibits contains adjudicative facts that are susceptible of judicial notice pursuant to Rule 201 of the Federal Rules of Evidence

Accordingly, Plaintiff respectfully requests that the Exhibits be disregarded.

II. ARGUMENT

Rule 201(b) of the Federal Rules of Evidence specifies the kinds of facts that may be judicially noticed:

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. § 201(b); *and see Wietschner v. Monterey Pasta Co.*, 294 F. Supp. 2d 1102, 1109 (N.D. Cal. 2003).

As a preliminary matter, purported correspondence between the parties in connection with the litigation are not properly the subject of judicial notice; nowhere has Defendant authenticated either of the two Exhibits.

Moreover, even if they had been authenticated, the Exhibits contain not only disputed fact, but address legal issues as well that are not amenable to judicial notice.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Exhibits B and C to Defendant's Request for Judicial Notice be stricken.

Dated: September 27, 2010

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS OR TRANSFER

Hearing Date: October 11, 2010
Time: 10:00 a.m.
Courtroom: 14

Plaintiff Rodolfo F. Mindoza, by and through his undersigned counsel, hereby respectfully requests the Court to take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence of the following exhibits attached to the Declaration of Dara Tabesh ("Tabesh Decl.") filed concurrently herewith:

Exhibit	Document
1	June 26, 2009 Amended and Restated Master Sale and Purchase Agreement ("MPA")
2	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) ("Sale Approval Order")
3	*In re General Motors Corp., et al., Debtors*, 407 B.R. 463 (S.D.N.Y. Bkrpt. July 5, 2009)
4	*Ehrlich, et al. v. BMW of North America, LLC*, No. 10-1151-ABC-PJWx, Docket No. 28 (C.D. Cal. Aug. 11, 2010)
5	*Marsikian, et al. v. Mercedes Benz USA, LLC, et al.*, No. 2:08-cv-04876-AHM-JTL, Docket No. 46 (C.D. Cal. May 4, 2009)
6	Report of the Senate Committee on Judiciary regarding Senate Bill 486 for a hearing dated May 4, 1993
7	*Winn, et al. v. Chrysler Group, LLC*, No. 2:09-cv-02805-MCE-GGH, 2009 WL 5206647 (E.D. Cal. 2009)
8	Chrysler LLC et al., Sale Approval Order: Old Carco LLC f/k/a Chrysler LLC, No. 09-5002 (Bankr. S.D.N.Y. May 20,

	2009) (Docket No. 3232)
9	*Winn v. Chrysler Group*, LLC, No. 2:09-02805-MCE-GGH, 2010 WL 1416749 (E.D. Cal. 2010)

I. THE COURT SHOULD TAKE JUDICIAL NOTICE OF PUBLIC RECORDS

Under Federal Rule of Evidence 201, "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

The legislative history of California's "Secret Warranty Law," known as Senate Bill 486, easily is a fact "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Fed. Depost Ins. Corp.* v. *Jackson-Shaw Partners No.* 46, *Ltd.,* 1994 WL 665262, at *8 n. 4 (N.D. Cal. Aug. 12, 1994) (under Rule 201, court may take judicial notice of the legislative history of a statute). Several courts both within and outside this district therefore have relied on section 201 in taking judicial notice of the legislative history of various rules or statutes. *See, e.g., Hunt* v. *Check Recovery Sys., Inc.*, 478 F. Supp. 2d 1157, 1161 n.1 (N.D. Cal. 2007) (taking judicial notice of the legislative history of California Business and Professions Code § 25000.2); *Rojas* v. *Brinderson Constructors, Inc.*, 567 F. Supp. 2d 1205, 1208 (C.D. Cal. 2008) (taking judicial notice of legislative history of Cal. Labor Code Section 2010).

Similarly, publicly filed court orders reflect facts not subject to reasonable dispute. *Summerfield v. Strategic Lending Corp.*, 2010 U.S. Dist. LEXIS 69153, at *1 (N.D. Cal. June 17, 2010). Indeed, "A court may take judicial notice of pleadings, court orders, and judgments filed in another litigation." *Putam v. State Bar of California*, 2010 U.S. Dist. LEXIS 80283 (C.D. Cal. June 25, 2010).

Similarly, publicly filed bankruptcy filings reflec facts not subject to reasonable dispute and are judicially noticeable. *Cobb v. Aurora Loan Services, LLC*, 408 B.R. 351, 354 (E.D. Cal. 2009) (considering plaintiff's bankruptcy filings in deciding defendant's motion to dismiss).

Based on these, Plaintiff respectfully requests the Court to take judicial notice of Exhibits 1-9 to the Declaration of Dara Tabesh in Opposition to Motion to Dismiss or Transfer.

II. CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks this Court to grant Plaintiff's Request for Judicial Notice.

Dated: September 27, 2010

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS OR TRANSFER

Hearing Date: October 11, 2010
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I. INTRODUCTION

General Motors, LLC ("GM," "New GM," or "Defendant") wants it both ways. It asks the Court to interpret the provisions of documents governing sale of assets from General Motors Corp. ("Old GM") to New GM and dismiss Plaintiff's First Amended Complaint ("FAC"), because according to GM, Plaintiff's claims are not the "Assumed Liabilities" of New GM. If this fails, however, GM contends that this Court lacks jurisdiction to rule on Plaintiff's Motion to Dismiss or Alternatively, for Transfer ("MTD"), because Plaintiff's claims are "core proceedings" arising under Title 11 or in a bankruptcy case, and so should be transferred to the New York bankruptcy court. GM is wrong on both counts.

As part of its acquisition of the assets of Old GM in bankruptcy, New GM agreed to assume certain liabilities, including for property damage caused by defects in certain vehicles, regardless of when they were purchased or manufactured, so long as the defects manifest themselves after the close of the acquisition of Old GM's assets. Despite its contentions otherwise, these "Assumed "Liabilities" are more than what is required by express warranty.

Further, responsibility for such liabilities does not flow from principles of successor liability; rather, it arises by New GM's express agreement to be bound. Indeed, New GM can hardly contend it is saddled with Old GM's responsibilities when it continues to perpetuate the same wrongs committed by Old GM: active concealment of a water leak defect and the existence of a Secret Warranty program.

GM should not be allowed to force transfer of this case to the bankruptcy court by manufacturing ambiguity in an otherwise clear agreement. That GM may interpret provisions of its agreement to assume liabilities differently that Plaintiff does not invoke the bankruptcy court's jurisdiction. As explained below, this is not a "core proceeding." Jurisdiction in this Court, not the New York bankruptcy court, is therefore proper, and accordingly, GM's MTD should be denied.

II. STATEMENT OF FACTS

Plaintiff brings this action against GM on behalf of himself and all similarly situated persons ("Class Members") who purchased or leased a Chevrolet Equinox sport utility vehicle ("SUV") of model years 2005 to 2009 and Pontiac Torrent SUV of model years 2006 to 2009 (collectively, the "Class Vehicles"). (FAC ¶ 1.)

On or about July 2009 ("Closing Date"), Defendant acquired the assets of Old GM. (*Id.* ¶ 1.) As part of its acquisition, Defendant expressly agreed (as discussed in more detail below) to assume certain liabilities of Old GM, including liabilities for the Class Vehicles, regardless of when they were purchased, as long as the defect contained in the Class Vehicles manifested itself after the Closing Date. (*Id.* ¶ 2; *see* fn. 6, *infra*.) Separately, Defendant also agreed to comply with the certification, reporting, and recall requirements of NHTSA and similar state laws, which includes California's Secret Warranty Law. (*Id.* ¶ 2.)

As alleged in the FAC, in or around the Closing Date, Defendant immediately became aware that the Class Vehicles contain one or more design flaws and/or structural defects that causes them to be highly prone to water leaks and flooding ("water leak defect"), including but not limited to water leaks that result in damage to the vehicles' front lights and taillights, as well as water leaks into the vehicles' interior cabins, causing mold and electrical failure due to water damaging the computer, electrical system, and interior components of the Class Vehicles. (FAC ¶¶ 3 & 54; *see also id.* ¶ 41.)[1]

Since the Closing Date, Defendant has also known that the water leak defect presents a safety hazard and is unreasonably dangerous to consumers for several reasons, including safety hazards that can result in sudden and catastrophic engine or electrical system failure and mold growth which can trigger numerous health

[1] Defendant acquired its knowledge of the water leak defect through internal sources not available to Class Members, including aggregate data from Defendant's dealers, and from other internal sources. (*Id.* ¶¶ 10 & 40.)

problems. (*Id.* ¶¶ 3, 4-11, 38-39 & 54.) In addition to these safety hazards, the costs of the water leak defect to consumers can be exorbitant because consumers will be required to pay hundreds, if not thousands, of dollars to repair the water leaks and the related damage that it causes. (*Id.* ¶¶ 9, 19, 26-28 & 43-44.)

Despite the fact that it has been fully aware of the water leak defect contained in the Class Vehicles since the Closing Date, Defendant has nevertheless actively concealed and/or failed to disclose the existence and nature of the defect to Plaintiff and prospective Class Members. (*Id.* ¶¶ 10 and 42.) Instead of disclosing its existence, in July 2009, Defendant formally adopted an internal Technical Service Bulletin ("TSB"), a clandestine program in which Defendant acknowledges the existence of the water leak defect to only its dealers and provides a cheaper, albeit temporary, fix: mainly replacing and/or resealing (with a special "3M ™ Ultrapro Autobody Sealant Clear or [its] equivalent") various structural components of the Class Vehicles that are defective, in part, because of insufficient, inadequate, or improperly applied body sealer. (*Id.* ¶¶ 11, 50, fn. 4 & 54-55.) While Defendant normally attributes water leaks to outside influences and does not cover them under warranty (*see, e.g., id.* ¶ 57 fn. 5), Defendant has instructed its dealers to perform the resealing and/or replacement program at no cost to consumers. (*Id.* ¶¶ 14 & 60.) Defendant's clandestine program to temporarily fix the water leak defect with a special sealer, however, is strictly limited to the most persistent customers and only those who visited the dealer and complained loudly enough about the problem. (*Id.* ¶ 15.) In addition, to mollify those consumers who complain loudly enough, in July 2009, Defendant implemented another clandestine program to secretly reimburse or pay for repair costs of those Class Vehicles that suffer from the water leak defect and the related damage that it causes, even when the water leak defect and the related damage that

it causes occurs outside the vehicle's 3-year/36,000-mile express warranty period. (*Id.* ¶ 18, 26 & 59.)[2]

When Defendant adopted these clandestine programs in July 2009, Defendant knew that Old GM had not disclosed the existence of the TSB to consumers, or the California New Motor Vehicle Board, as is required by California's Secret Warranty Law. (*Id.* ¶¶ 48-53.) GM also knew that as a result of having formally adopted this internal bulletin under the Amended and Restated Master Sales and Purchase Agreement ("MPA") (Declaration of Dara Tabesh in Support of Opposition ("Tabesh Decl.") Ex. 1) and pursuant to California's Secret Warranty Law it had a duty (after its acquisition of Old GM's assets and liabilities) to immediately disclose the TSB to the various entities and failed to do so. (*Id.* ¶¶ 2 & 12.) Despite this knowledge, GM did not notify Plaintiff or Class Members about its cost-free repairs and reimbursement program (*e.g.*, replacement of interior carpets, as well as other components within the vehicle damaged by the water leak defect). (*Id.* ¶¶ 62-63.) Thus, by its conduct, GM violated the California Secret Warranty law. (*Id.* ¶¶ 48-66.)

III. ARGUMENT

A. Plaintiff's Claims Are the "Assumed Liabilities" of GM

1. New GM Assumed Liabilities for the Economic Loss Suffered by Plaintiff and Prospective Class Members

In a misguided attempt to distract the Court from the most pertinent issues, Defendant repeatedly invokes provisions in its Order Authorizing Sale of Assets ("Sale Approval Order") (Tabesh Decl. Ex. 2) and MPA (collectively, the "Closing Documents") related to "express warranty" law. (*See, e.g.*, MTD at 2:4-6, 2:26-28

[2] For example, Defendant refused to replace Plaintiff's indoor carpeting damaged by the water leak defect while agreeing to replace or reimburse the floor carpeting and other similar items which is similar to the manner in which Defendant deals with the most persistent customers who complain loudly enough. (FAC ¶¶ 25-28.)

(fn.1), 5:5-8, 6:3-6 & 7:9-13.) Plaintiff, however, is not bringing a breach of express warranty claim; Plaintiff brings claims for violations of the CLRA and the UCL, which transcend the law of warranty.[3] Despite GM's contention that it can only be liable for breach of express warranty claims after the Closing Date, it cannot avoid liability for that which it has assumed under the Closing Documents. (Sale Approval Order ¶¶ 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 . . . ." (emphasis added)); ¶ 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 . . . ." (emphasis added)); ¶ 9 ("[N]o claims other than Assumed Liabilities, will be assertable against the Purchaser . . . ."); *see also id.* ¶¶ 10, 46-48 & 52; MPA §§ 2.3(a) & 9.19.) Indeed, when purchasing the assets of Old GM, Defendant was provided assurance that it would not be forced to deal with certain claims that would otherwise be brought against Old GM: "Effective upon the Closing . . . 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…proceeding against the Purchaser…or the Purchased Assets, with respect to any (i) claim against the Debtors *other than Assumed Liabilities* . . . ."

[3] Indeed, the California legislature passed the CLRA and the UCL in large part because traditional warranty and tort doctrines did not provide consumers sufficient legal remedies.

(Sale Approval Order ¶ 47 (emphasis added).) As explained below, Plaintiff's claims are the "Assumed Liabilities" of New GM.[4]

a) By its express terms, the MPA and Sale Approval Order cover damage to the Class Vehicles

Incredibly, GM argues that "because plaintiff's nondisclosure claims are not claims for wrongful death, personal injury or property damage 'arising directly from accidents or incidents or other distinct and discreet [sic] occurrences that happen on or after the Closing Date,' the only product liabilities New GM agreed to assume, see MPA § 2.3(a)(ix),[5] paragraphs 8, 46 and 47 of the Sale Approval Order expressly enjoin plaintiff from asserting these claims against New GM." (MTD 2:7-12.) This is a gross mischaracterization of Plaintiff's claims. Plaintiff's FAC is replete with allegations of "property damage" that arose "after the Closing Date" and which arose "directly from accidents or incidents or other distinct and discrete occurrences that happen on or after the closing date."

Plaintiff alleges that the Class Vehicles are damaged because they are "highly prone to water leaks and flooding . . . including but not limited to water leaks that result in flooding of the trunk and spare tire well, water leaks that result in damage to the vehicles' front lights and taillights, as well as water leaks to the car's interior cabin, causing mold and electrical failure due to the water damaging the computer, electrical system, and interior components of the Class Vehicles." (FAC ¶ 3; *see also id.* ¶ 5 ("The water leak defect is also known to cause tail lights to fail or

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[4] As discussed below, in a separate provision that Defendant failed to discuss in its motion, New GM also agreed to be bound by California's Secret Warranty law. (*See, e.g.*, Sale Approval Order ¶ 17.)

[5] The Assumed Liabilities under MPA § 2.3(a)(ix) are described as: "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 . . . which arise directly out of accidents, incidents or other distinct and discreet [sic] occurrences that happen on or after the Closing Date and arise from such motor vehicles' operation or performance . . . ."

malfunction."); ¶ 6 ("[T]he water leak defect . . . can promote mold growth."); ¶¶ 19-21 and 87-90.) Indeed, Plaintiff's vehicle was "damaged" by the water leak defect. For example, in December 2009 and during the express warranty period, Plaintiff's daughter "noticed a pungent odor emanating from the vehicle that caused her light headaches and breathing difficulties." (FAC ¶ 23.) She later noticed that the rear passenger and driver side seat of the vehicle were all wet. (*Id.* ¶ 23.) When she complained and attempted to repair the problem, the first GM dealer told her to "just air it out" and that "it happens here all the time." (*Id.* ¶ 24.) Not satisfied with that response, Ms. Mendoza visited a second GM dealer, who verified the water leak, and noted the presence of mold, which was causing a mildew odor in the vehicle, but did not provide Plaintiff with the fixes that Defendant had outlined in its clandestine TSB program. (*Id.* ¶¶ 24 & 26.) The dealer also refused to replace the moldy carpets. (*Id.* ¶ 26.) Plaintiff and his daughter were ultimately forced to pay out of pocket to repair the damage caused by the water leak defect. And despite paying to fix the problems, the vehicle continues to smell like mildew and continues to experience other problems associated with the water leak defect. (*Id.* ¶¶ 27 & 28; *see also id.* ¶ 41.) These show without a doubt that Class Members have suffered and continue to suffer "property damage" due to the water leak defect.

Further, Plaintiff's Class definition specifically excludes "all claims for out-of-pocket water leak defect related expenses that were incurred prior to July 2009. (*Id.* ¶ 72.) Indeed, the above-referenced allegations of damage to Plaintiff's vehicle (as well as his daughter's personal property) occurred in December 2009. (*Id.* ¶ 23.) Plaintiff even cites to NHTSA complaints of damage caused by the water leak defect after the Closing Date. (*See, e.g., id.* ¶ 41 at 10:17-11.4) ("*On Jan. 11, 2010*, I started my car to let it warm up . . . . the car shut down and all of the warning lights on the dashboard came on . . . water had leaked down the right front passenger side of the window, freezing, thawing and backing up which got to the wiring and burnt it out." (emphasis added).)

Indeed, GM is wrong to contend that "the Sale Approval Order bars plaintiff's claims in their entirety, including claims for reimbursement of expenses incurred after the Closing Date, because, among other things, the alleged design defect clearly i) '*relates to the production of vehicles prior to the Closing Date . . . .*'" (emphasis added) (citing Sale Approval Order ¶ 46).) The threshold question is not whether the vehicles were manufactured before the Closing Date, but rather, whether the incidents (*i.e.*, manifestation of the defect) giving rise to liability arose after the Closing Date. As Judge Gerber of the Bankruptcy Court noted in ruling on the sale of assets that gave rise to New GM and objections thereto, the Assumed Liabilities include "*all* product liability claims arising from accidents or other discrete incidents arising from operation of GM vehicles occurring subsequent to the closing . . . *regardless of when the product was purchased*." *In re GMC*, 407 B.R. 463, 482 (2009) (emphasis in original) (Tabesh Decl. Ex. 3). By this logic—and contrary to GM's assertion otherwise—GM maintains liability for defects in vehicles manufactured and sold before the Closing Date so long as the facts giving rise to these claims occur after the Closing Date.[6] Here, Plaintiff limits its allegations to such occurrences.

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[6] Indeed, had the Closing Document drafter intended to exclude these types of claims, they would have done so expressly. No fewer than 16 "Retained Liabilities" of Old GM are listed, and they do not include such claim types. (*See* MPA § 2.3(b).) The only plausibly relevant clause is, "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 . . . ." (*Id.* § 2.3(b)(xvi).) Plaintiff, however, has dropped his implied warranty claim, Cal. Civ. Code § 1791.1, and his CLRA and UCL claims are not *implied* common law or statutory obligations related to any warranty, they are *express* obligations that transcend the law of warranty. Moreover, the MPA also clarifies impermissible claim that can arise after the Closing Date. (*See id.* § 2.3(a)(ix) ("[F]or 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."); *see also* Sale Approval Order ¶¶ 8 & 62.)

Finally, Plaintiff's allegations also cover "distinct and discreet [sic] occurrences." (MPA § 2.3(a)(ix).) Indeed, Defendant can hardly contend that Plaintiff's allegations of the water leak defect that manifested after the Closing Date and resulted in damage to the interior of a vehicle's cabin or damage to a vehicle's tail lights due to flooding, does not reflect "distinct and discrete occurrences."

b) Non-Disclosure and active concealment of material information resulting in economic loss are actionable

Defendant's argument that the occurrences disclosed in Plaintiff's allegations, and by consequence Plaintiff's CLRA and UCL claims, cannot be covered under the terms of the Closing Documents because these are claims for "*non-disclosure* of an alleged defect causing *economic loss*," (MTD at 12:10-11 (emphasis in original)), lacks merit on at least two counts.

First, even though non-disclosure of a material defect at the time of purchase and lease may not be actionable under the terms of the Closing Documents if these occurred prior to the Closing Date,[7] active concealment by New GM of these same defects or the existence of a Secret Warranty program after the Closing date gives rise to liability for New GM. New GM cannot avoid liability, as it hopes to do, if it perpetuates the same or similar wrongs as Old GM by actively concealing a defect that should have been disclosed at the time of repair, or a Secret Warranty Program that should have been disclosed when it was adopted. *See Ehrlich et al. v. BMW of North America, LLC*, No. 2:10-cv-01151, slip op. at 16:11-17:8 (C.D. Cal. Aug. 11, 2010) (failure to disclose the existence of a secret warranty program is active concealment in violation of plaintiff's fraud-based CLRA and UCL claims) (Tabesh Decl. Ex. 4). For example, here, New GM's failure to disclose the secret warranty program with the available fixes which it adopted in July 2009 to Plaintiff

[7] With respect to Defendant's failure to disclose the water leak defect at the time of purchase, Plaintiff's allegations are directed only at those consumers who purchased the Class Vehicles (most likely as used vehicles) after the Closing Date.

violated the CLRA. (FAC ¶¶ 24-25.) Indeed, Plaintiff has alleged that her vehicle continues to smell of mildew, a problem that apparently Defendant has attempted to secretly remedy in a revised TSB, but has so far failed to inform or make available to Plaintiff and class members. (*See infra* fn. 10.)

Second, Defendant provides no support for its counterintuitive assertion that "injury to Persons or damage to property"[8] is not compensable as an "economic loss." (MTD at 12:8-13:11.) Even if Plaintiff is making allegations of "economic loss," this loss flows directly from the injury to the Class Members and damage to the Class Vehicles. *Cf. Ryan v. Foster & Marshall, Inc.*, 556 F.2d 460, 464 (9th Cir. 1977) (distinguishing actual damages from mental suffering and punitive damages and noting that "[a]ctual damages mean some form of economic loss"); *Rich Prods. Corp. v. Kemutec, Inc.*, 241 F.3d 915, 918 (7th Cir. 2000) ("Recovery of economic loss is intended solely to protect purchasers from losses suffered because a product failed in its intended use."). The fact that Plaintiff and Class Members have been forced to pay out of pocket for repairs that should have been performed under Defendant's Secret Warranty Program reflects an "economic loss" under any plausible definition of the term.

2. **New GM must comply with the reporting requirements of the California Secret Warranty Law**

a) Plaintiff has adequately alleged the existence of a secret warranty adjustment program.

As discussed extensively in the FAC, GM's secret warranty adjustment program qualifies as an unlawful "adjustment program" as that phrase is defined by

[8] Presumably, GM recognizes it would be responsible for personal injury claims that arose after the Closing Date due to a defect in its vehicles that existed at the time of purchase. Yet, based on positions taken in its MTD, GM believes it would have no responsibility to repair or compensate for repair to property damage caused by such a defect; nor would it have responsibility to repair or compensate for repair of the defect that caused such personal injury.

the clear and straightforward language of California's Motor Vehicle Warranty Adjustment Programs Act ("MVWAPA," also known as the "Secret Warranty Law"), Cal. Civ. Code § 1795.90 *et seq.* (FAC ¶¶ 10-12 and 48-66.)

The Secret Warranty Law imposes certain duties on vehicle manufacturers. Among these is to notify consumers about the covered "condition" and the "terms and conditions of the program." Cal. Civ. Code § 1795.92. Plaintiff has alleged that while GM does not normally cover damage caused by water leaks under its warranty, in July 2009, it formally adopted an internal bulletin that was distributed to only its dealers in which it acknowledged the existence of the water leak defect, identified multiple causes, and provided various fixes for each of these causes. (FAC ¶ 54.) Typically, Defendant does not cover fixes or repairs related to the water leak defect because Defendant or its authorized dealers for vehicle repairs generally tell consumers that the water leak defect occurs as a result of outside influences. (*Id.* ¶ 57.) Nevertheless, in certain instances, Defendant has offered, pursuant to the TSB, to extend its warranties to cover repairs related to the water leak defect. (*Id.*)

GM does not dispute the fact that it never gave notice to Plaintiff or the prospective Class Members of its secret TSB program.[9] Indeed, under California's Secret Warranty Law, GM should have notified all Class Members of the conditions that give rise to repairs related to the water leak defect, including those Class Members who incurred out-of-pocket costs for water leak defect repairs prior to acquiring knowledge of the program. *See* Cal. Civ. Code §1795.92 ("A manufacturer who establishes an adjustment program shall implement procedures to assure reimbursement of each consumer . . . who incurs expenses for repair of a condition prior to acquiring knowledge of the program."). Here, GM failed to

[9] *See Morris v. BMW*, 2007 U.S. Dist. Lexis 85513, at *18 (N.D. Cal. 2009) ("Defendants do not deny that they failed to inform the public of the of the adjustment program stemming from the TSB. Thus, Plaintiffs have successfully alleged violations of the Secret Warranty Act.").

notify Plaintiff (or any other Class Members) of the TSB program or to "implement procedures" that would have reimbursed Plaintiff or other prospective Class Members for their repairs related to the water leak defect.

Furthermore, in addition to the TSB program that GM adopted in July 2009,[10] Plaintiff has alleged that after July 2009, to mollify those consumers who complained loudly enough, GM adopted another secret program where it reimbursed or paid for the costs of repairing the water leak defect and the related damage that it causes, regardless of whether these problems arose within the vehicle's warranty period. (FAC ¶¶ 15, 18, 25 & 76.) Again, GM did not notify Plaintiff or any other Class Member of these programs. (*Id.* ¶¶ 62-63.) Thus, by extending its warranty to cover the costs related to the water leak defect and the property damage caused by it (and by doing so even if that warranty had expired), GM has expanded or extended the consumer's warranty beyond its stated limits in violation of the Secret Warranty law. (*Id.* ¶¶ 57-60.)

Moreover, GM's decision to offer free repair[11] outside the vehicle's New Car Warranty is not done on an *ad hoc* basis. (*Id.* ¶ 59.) Rather, it is made pursuant to a systematic policy—communicated to, *inter alia*, regional offices, dealers, and GM customer care personnel—designed to pacify the most vocal consumers. (*Id.*)

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[10] Plaintiff relies on TSB No. 08-08-57-001A to show the details of GM's secret warranty program adopted in July 2009. (*See* FAC ¶ 54.) A more recent version of this, TSB No. 08-08-57-001B, dated January 13, 2009," expands the secret TSB program to include "a mildew odor condition repair." (Tomasek Decl. Ex. 2 (filed concurrently with GM's MTD) at 1.)

[11] GM suggests that "none of these TSBs provides for 'free' repairs or, indeed, says anything at all about payment for the repairs or whether or not they are covered under Old GM's standard repair warranty." (MTD at 6:4-6 (emphasis removed).) Plaintiff, however, has alleged that these repairs are covered under warranty and/or provided outside the warranty for those customers who complain loudly enough. (FAC ¶ 14.) Moreover, it is interesting to note that neither Defendant's litigation counsel nor corporate counsel's declarations states under oath that these repairs were not covered under warranty. Nevertheless, this is a question of fact inappropriate for determination at the pleadings stage.

Plaintiff has offered examples of consumers suffering damage related to the water leak defect but nevertheless being denied this coverage. (*See, e.g.*, FAC ¶¶ 25-26, 41; *see also id.* fn. 5.)

Further, GM's contention that its water leak defect repair program is not "secret" because these TSBs can be found by a simple Google search is to no avail. (MTD at 6:11-15.) Even if true, a reasonable consumer cannot be charged with such knowledge. As the *Falk* court explained, "It is true that the prospective purchasers, with access to the internet, could have read the many complaints . . . [However,] many consumers would not have performed an internet search before beginning a car search. Nor were they required to do so." *Falk v. General Motors Corp.*, 496 F. Supp. 2d 1088, 1097 (N.D. Cal. 2007); *see also In re Tobacco II Cases*, 46 Cal. 4th 298, 328 (2009) ("[A]llegation of reliance is not defeated merely because there was alternative information available to the consumer-plaintiff, even regarding an issue as prominent as whether cigarette smoking causes cancer."). Here, as explained below, GM was under a duty to disclose and actively concealed the existence of its Secret Warranty program. Plaintiff and Class Members cannot be charged with knowledge of the TSBs—let alone a Secret Warranty program—merely because GM's TSBs can be found on the Internet.[12]

In *Marsikian v. Mercedes Benz USA, LLC*, 2009 U.S. Dist. LEXIS 117012, No. 2:08-04876 (C.D. Cal. May 4, 2009) (Hon. Judge A. Howard Matz presiding) (Tabesh Decl. Ex. 5), the court addressed the pleading of a UCL unlawful claim based on a violation of the Secret Warranty Law, denied Mercedes' motion to

[12] Indeed, the legislative history to the Secret Warranty Law emphasizes this point: "According to supporters of the bill, manufacturers to avoid recalls—either because the defect is minor or to avoid publicity and higher costs—often issue *"technical service bulletins"* to their dealers. Copies of these service bulletins are sent to NHTSA; whether or not they are safety related, but not directly to the owners of the cars. Consumers in the market for a new car are in the dark . . . ." (Senate Committee on Judiciary, 1993-94 Session (SB 486) at 3-4 (emphasis added) (Tabesh Decl. Ex. 6).) Thus, it is clear that the Secret Warranty Law is designed to prevent the exact conduct Plaintiff alleges regarding GM.

dismiss for failure to state a claim. The class action plaintiffs in *Marsikian* alleged: that the defendant had issued two TSBs and devised a policy of providing "temporary fixes" for an alleged defect, which constituted a warranty adjustment program under the MVWAPA because maintenance of the defect part was not covered under the original warranty; that defendant extended the warranty even further by repairing and reimbursing defect related damages for the most vocal complaining customers as "good will adjustments" or "policy adjustments;" that plaintiffs were not informed of the adjustment program; and that when plaintiffs requested a free repair or replacement they were refused. *Marsikian*, slip op. at 9-10. The district court found these allegations to be adequate to state a UCL claim based on a violation of the Secret Warranty Law. *Id.* Plaintiff's allegations in the instant case are substantially similar to the allegations that the *Marsikian* court found to be sufficient, and GM's Motion to Dismiss should similarly be denied.[13]

b) **Under the Closing Documents, GM's Secret Warranty program must be reported to the Class Members**

Despite Defendant's contention that it is not bound by California's Secret Warranty Law, the MPA compels otherwise:

> 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

[13] With respect to GM's argument that Plaintiff's claims for injunctive relief are preempted by the NHTSA (*see* MTD at 4 fn. 3), *Marsikian* also finds under factually similar circumstances that conflict preemption does not bar a recall remedy under state law. *Marsikian*, slip op. at 11-12 (citing *Chamberlan* v. *Ford Motor Co.*, 314 F. Supp. 2d 952 (N.D. Cal. 2004) ("Defendant has not shown that preemption doctrine would bar a recall remedy."). Moreover, regardless of the Court's power to order a recall, Plaintiff has requested a range of remedies that does not necessarily include a recall. In addition to seeking damages, Plaintiff has requested injunctive relief available under the UCL and CLRA, including an order requiring GM to comply with California's Secret Warranty Law. *See id.*

> 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.

(MPA § 6.15 (a)). Here, the MPA clearly invokes a series of laws designed to promote public interest and safety, including "the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Safety Act . . . ." (*Id.*) This clause then goes on to capture "similar Laws."[14] By any reasonable interpretation, given the similarity of the California Secret Warranty Law to the acts and requirements cited in § 6.15(a) and ¶ 17 of the Sales Approval Order, the broad and expansive definition of Law in § 1.1, and California law's requirement that a Secret Warranty must be reported within 90 days of adoption, California Secret Warranty Law § 1795.90(a), taken with Plaintiff's allegation that GM's secret TSB program was adopted in July 2009 (FAC ¶ 54 & fn. 4), the only reasonable conclusion is that the after the Closing, New GM violated California's Secret Warranty Law when it failed to disclose its adopted Secret Warranty program to prospective Class Members. Indeed, by making the argument that Plaintiff's Secret Warranty Claim may amount to a recall, New GM has admitted that California's Secret Warranty Law is covered by this provision because it is similar to the certification, reporting and recall requirements of NHTSA.

B. Plaintiff Does Not "Saddle" New GM With Old GM's Liabilities

Defendant repeatedly complains that Plaintiff's claims "represent an improper attempt to fasten successor, transferee, derivative or vicarious liabilities on New GM. (MTD at 8:24-25 (citations and quotations omitted).) As explained above,

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[14] The MPA defines "Law" as "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." (MPA § 1.1 (Defined Terms).)

however, Plaintiff's claims are proper because they represent Assumed Liabilities of New GM, *i.e.*, they are not brought under any theory of successor, transferee, derivative, or vicarious liability, because New GM agreed to assume them. Plaintiff's claims are valid because Plaintiff has alleged active concealment of the water leak defect and the Secret Warranty Program from Plaintiff and Class Members *after the Closing Date*, and these allegations satisfy the pleading requirements for claims brought under the CLRA and the UCL.

Under California law, a duty to disclose material facts may arise when the defendant actively conceals a material fact from the plaintiff.[15] *See Falk*, 496 F. Supp. 2d at 1094-96 (citation omitted).[16] While GM declines to address in its papers the notion that active concealment creates a duty to disclose, Plaintiff has alleged sufficient facts here creating an independent basis for GM's duty to disclose. Plaintiff alleges that GM actively concealed the water leak defect by withholding information about the systematic nature of the problem from consumers, and where GM has attempted to repair the water leak defect, that GM did so in a manner that would temporarily repair the problem, leaving consumers with defective vehicles that are likely again to experience the water leak defect

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[15] Under California law, a duty to disclose material facts may also arise in the following circumstances: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; or (3) when the defendant makes partial representations but also suppresses some material fact. *Falk*, 496 F. Supp. 2d at 1094-96 (citation omitted).

[16] Material facts may include, but are not limited to, unreasonable safety defects, *see, e.g.*, *id.* at 1096 (explaining that defect to speedometer causing drivers to travel at unsafe speeds is material), and monetary costs associated with such defects (including the inconvenience of repeated repairs and replacement costs), *Marsikian*, slip op. at 9; *see also Ehrlich*, slip op. at 16:11-18 (same). Here, Plaintiff has satisfied the pleading requirements for materiality. The FAC alleges the materiality of the water leak defect, including the costs for repairs related to the water leak defect, (FAC ¶¶ 9, 28, 42 & 43), the need for repeated repairs or replacements, (*id.* ¶¶ 16, 17, & 21), and the significant safety dangers posed by the water leak defect, (*see, e.g.*, *id.* ¶¶ 4-8).

outside the warranty period, the consequent damage caused by water leaks, and the associated safety hazards. (FAC ¶¶ 16-17.) *See Falk*, 496 F. Supp. 2d at 1097 (explaining that an automaker's replacement of defective parts with the same defective model constitutes concealment of a systematic problem). Additionally, GM actively concealed the water leak defect by providing free repairs to consumers who complained loudly without disclosing the full nature of the program to general public. (*Id.* ¶¶ 48, 56, 58-59 & 62-63.) *See Marsikian*, slip op. at 8 (allegations that automaker extended secret "good will adjustments" to consumers who complained loudly enough, without disclosing the full nature of the problem to the general public, indicated active concealment in violation of the CLRA); *see also Ehrlich*, slip op. at 16:11-17:8 (same.)

Defendant cannot contend that it has no liability because the water leak defect arose from a design defect that was present before the closing date. (*See* MTD at 3:1-8.) All Assumed Liabilities invoked in Plaintiff's claims relate to harms that arose after the Closing Date. New GM is liable for such harms.

C. This Federal Bankruptcy Court Does Not Have Jurisdiction Over This Case

Like other federal courts, bankruptcy courts are courts of limited jurisdiction. *In re Johnson*, 960 F.2d 396, 399 (4th Cir. 1992). As such, "[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994) (citations omitted).

Only the Constitution and federal statutes can confer subject matter jurisdiction on federal courts. *Id.* 28 U.S.C. § 1334 confers bankruptcy jurisdiction and provides that "the district courts shall have original and exclusive jurisdiction of all cases under title 11." *Id.* § 1334(a). "Cases under title 11" refers merely to bankruptcy petitions themselves. *In re Marcus Hook Dev't Park, Inc.*, 943 F.2d 261, 264 (3d Cir. 1991). Because this case does not involve a bankruptcy

petition, but rather a consumer class action alleging state law causes of action, the Court must examine subsection (b), which provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11." 28 U.S.C. § 1334(b).

In addition to "cases under title 11," the district courts may refer to the bankruptcy court proceedings that (1) "arise under" the Bankruptcy Code, (2) "arise in" a case under the Bankruptcy Code, or (3) "relate to" a case under the Bankruptcy Code. *Id.* § 157(a). Such delegation to non-Article III tribunals, however, has its limitations. *See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). As non-Article III tribunals, bankruptcy courts may "hear and determine," and thus issue dispositive orders in "all core proceedings arising under title 11, or arising in a case under title 11 . . . ." 28 U.S.C. § 157(b)(1).[17] A bankruptcy court, however, may not issue dispositive orders in non-core proceedings that are otherwise related to a case under title 11 unless the parties involved in the proceeding consent. *Id*. § 157(c).[18]

To determine whether a proceeding "arises under" title 11, courts apply the same test used for deciding whether a civil action presents a federal question under 28 U.S.C. § 1331. *See In re Wood*, 825 F.2d 90, 96-97 (5th Cir. 1987). Thus, "arising under" jurisdiction in bankruptcy matters extends to "only those cases in which a well-pleaded complaint establishes either that federal [bankruptcy] law creates the cause of action or that the plaintiff's right to relief necessarily depends

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[17] While the Bankruptcy Code is not clear, commentators believe that the term "core" refers to "arising in" or "arising under" proceedings collectively. *See* 3 David G. Epstein et al., Bankruptcy § 12-2 at 203 (1992).

[18] Here, while Defendant does not contend that this is a related non-core proceeding—because it is not—Plaintiff nevertheless advises the Court that he will not consent to the Bankruptcy Court's jurisdiction in this matter, nor will he waive his right to a jury trial. *See In re Cinematronics*, 916 F.2d 1444, 1451 (9th Cir. 1990) ("[W]here a jury trial is required and the parties refuse to consent to bankruptcy jurisdiction, withdrawal of the case to the district court is appropriate.").

on resolution of a substantial question of federal [bankruptcy] law." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983).

Unquestionably, Plaintiff's state law claims against Defendant do not arise under federal law. While at best Defendant may assert a defense arising from the scope of an order issued by the bankruptcy court, a case cannot be transferred "to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." *Caterpillar v. Williams*, 482 U.S. 386, 393 (1987).[19] Therefore, this consumer class action case does not present a question of federal law that would support "arising under" jurisdiction.

1. Plaintiff's state law claims are not core proceedings because they do not arise under title 11 or in a case under title 11

Generally, "a core proceeding is a legal dispute between parties in interest to a bankruptcy case, one of whom is almost always the debtor. As fixed by the very nature of the parties' relationships to the debtor and the relief requested, core proceedings are those intrinsic to the adjustment of debtor-creditor relationships involved in bankruptcy relief." *Marine Iron Co. et al. v. City of Duluth*, 104 B.R. 976, 980 (Bankr. Minn. 1989); *see also, e.g., In re Int'l Nutronics*, 28 F.3d 965,

[19] While the Supreme Court has concluded that the preemptive force of some federal statues is so strong that they completely preempt an area of state law, *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987), no court has ever held that 11 U.S.C. § 363 grants exclusive jurisdiction to the federal bankruptcy court to interpret its provisions. Indeed, the Supreme Court has construed only three federal statues to preempt their respective fields so as to authorize removal and transfer of actions seeking relief exclusively under state law. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6-11 (2003) (Section 301 of the Labor Management Relations Act; Section 502 of ERISA; and Sections 85 and 86 of the National Bank Act); *see also Winn v Chrysler Group, LLC*, 2009 WL 5206647 (E.D. Cal. 2009) (Tabesh Decl. Ex. 7) (denying Chrysler's motion to remove and transfer plaintiffs' California state law claims to the federal bankruptcy court in New York because the interpretation of the bankruptcy court's free and clear sale order was at best an affirmative defense that did not provide the bankruptcy court with jurisdiction).

969 (9th Cir. 1994) ("Core proceedings are matters concerning the administration of the estate and rights created by title 11."); *In re Harris Pine Mills,* 44 F. 3d 1431, 1435 (9th Cir. 1995) ("If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding.").

Here, none of Plaintiff's state law claims can be classified as core proceedings. Plaintiff's case is a consumer action between two parties, neither of which was a debtor or a petitioner for bankruptcy relief in Old GM's Bankruptcy case, and neither of which was a scheduled creditor or claimant against Old GM's bankruptcy estate. Further, Old GM is not a party to this action. And finally, none of Plaintiff's claims fall within any of the more specific examples of core proceedings set forth in 28 U.S.C. §§ 157(b)(2)(A)-(P).

Nonetheless, Defendant incorrectly argues that "plaintiff's entire pleading is nothing more than an attempt to fasten successor liability on New GM in violation of the Sale Approval Order" (MTD at 10:12-13), and because Judge Gerber had jurisdiction to enter the Sale Approval Order pursuant to section 363 and to enforce its provisions, "the prosecution of this action in violation of the Sale Approval Order is also a core proceeding" (MTD at 14:20-24.)

Defendant's reliance on *In re Eveleth Mines, LLC,* 312 B.R. 634, 644-45 (Bankr. D. Minn. 2007), to support this point is misplaced. There, the parties had each consented to the bankruptcy court's jurisdiction from the initiation of proceedings through the time of the purchaser's motion on the merits. *Id.* at 643. Weeks later, however, defendant challenged the court's jurisdiction. *Id.* The Bankruptcy Court, in finding that the case should continue under its jurisdiction, noted that prior to this, defendant "gave every indication of being content with having the Bankruptcy Court pass on the substantive issue." *Id*.

Here, however, Plaintiff never availed himself of or consented to the bankruptcy court's jurisdiction. More significantly, prior to the defendant

challenging jurisdiction, the purchaser in *In re Eveleth Mine* filed an adversary proceeding asking the Bankruptcy Court to interpret the "free and clear" language of its sale order to determine whether or not the purchaser, as a successor in interest, could be liable for certain taxes relating to the debtor's pre-sale production. *Id.* at 640-42. Plaintiff here, however, has not filed an adversary proceeding and is not seeking to challenge or interpret the bankruptcy court's "free and clear" sales order (11 U.S.C. § 1363) under a successor liability or any other theory.[20] Rather, Plaintiff is only attempting to enforce state law consumer protection claims that New GM expressly assumed through contract. *See id.* at 638 fn. 3 (noting that the "identity of the 'assumed liabilities' [was] not relevant to the matter at bar").

Winn, 2009 WL 5206647, is instructive. In *Winn*, after plaintiff dismissed his successor liability claims, defendant Chrysler argued that the sale of old Chrysler's assets, as approved by the bankruptcy court, was a core proceeding and that plaintiff's complaint, which challenged the bankruptcy court's order with state common law claims, amounted to "disguised bankruptcy claims" that should be transferred to the New York bankruptcy court. *Id*. at *3. In denying Chrysler's motion to transfer and remanding the matter to state court, the court reasoned that plaintiff's claims were for indemnity arising from new Chrysler's obligations to its dealers for certain assumed agreements—obligations New Chrysler expressly assumed when it purchased Old Chrysler's assets" (*i.e.*, "assumed liabilities"). *See id.* at **3-4.[21] Consequently, the court held that plaintiff's state law claims were

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[20] *But see Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 163 (7th Cir. 1994) (suggesting that section 363(f) applies only to secured creditors—"liens and other encumbrances;" and further suggesting that section 363(f) cannot be employed to grant federal courts jurisdiction under 28 U.SC. § 1334 and extinguish a successor liability claim).

[21] *See* Chrysler LLC et al. Sale Approval Order: *Old Carco LLC f/k/a Chrysler LLC*, No. 09-5002 (Bankr. S.D.N.Y. May 20, 2009) (Docket No. 3232) ("[T]he purchaser shall not have any successor liability (*other than with respect*

not "core bankruptcy claims" because they were not unique to or uniquely affected by the bankruptcy proceedings and did not directly affect "core bankruptcy functions." *Id*.

Despite this adverse ruling, defendant Chrysler brought a motion for reconsideration, arguing that the federal court had jurisdiction under 28 U.S.C. § 1334(b), because Chrysler did not "expressly assume liabilities" arising from a dealership agreement reached with one of the dealership defendants. *Winn v. Chrysler Group*, LLC, 2010 WL 1416749, at **1-2 (E.D. Cal. 2010) (Tabesh Decl. Ex. 9). Again, in rejecting Chrysler's motion to transfer and remanding the matter to state court, the court held that "Plaintiffs' lawsuit asserts claims sounding exclusively in state law [and] to the extent that a that a bankruptcy defense is appropriate, there is no reason why the defense cannot be asserted in state court." *Id.* at *3. The court also stated that the bankruptcy debtor, Old Chrysler, was not even a party to the lawsuit, and in the absence of the successor claims, New Chrysler had not demonstrated how the indemnity claims would impact the handling of the Bankruptcy state. *Id.* at *4. Significantly, the court, noting that plaintiffs' indemnity claims against Chrysler were based on liabilities that "Chrysler already assumed," distinguished the case from other district court decisions arriving at a contrary result because in those cases, there was no indication that a purchaser of assets had assumed any liabilities. Instead, those cases were grounded in successor liability theories, a factor not at issue in the *Chrysler* case. *Id*. at *3 fn. 4.

Similarly, here, to the extent New GM contends that Old GM's bankruptcy is implicated by Plaintiff's claims, there is no reason why it cannot assert its bankruptcy defense in this Court.[22] And because Plaintiff expressly excluded all

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to any obligations arising under the Assumed Agreements from and after the Closing.") (emphasis added) (Tabesh Decl. Ex. 8).

[22] Moreover, here, unlike *Winn*, there is not even an express provision that New GM can point to as a defense that can demonstrate that it did not agree to

claims that arose prior to the Closing Date, there is little doubt that New GM's alleged bankruptcy defense reflects nothing more than improper forum shopping, which, if taken to its logical end, would result in all state law claims brought against New GM being dismissed or transferred to the Bankruptcy Court of New York, no matter where they are filed, so long as New GM contends it has a different interpretation of the claims it assumed or did not assume by contract.

2. Plaintiff's claims are not grounded in theories of successor liability because they implicate GM's "assumed liabilities"

Defendant's claim that "plaintiff's entire pleading is nothing more than an attempt to fasten successor liability on New GM in violation of the Sale Approval Order" (MTD at 10:10-13), is a gross mischaracterization devised to confer jurisdiction on the Bankruptcy Court of New York where none exists. New GM is completely aware that the bankruptcy court in New York has no jurisdiction over Plaintiff in this matter unless it can convince this Court that Plaintiff is in violation of the Sale Approval Order, a contention New GM makes by asserting that Plaintiff is attempting to "[f]asten successor liability on New GM in violation of the Sale Approval Order." However, Plaintiff's state law claims relate only to those claims New GM expressly assumed under the MPA, not any claim that the bankruptcy court expressly discharged as part of the Sale Approval Order. Manufacturing ambiguity in an otherwise clear agreement should not be a basis for a defendant to seek dismissal of a case on jurisdictional grounds. GM's attempt to do so here to avoid liability for claims it expressly assumed is disingenuous and improper. *See also Winn*, 2009 WL 5206647, at *3 (rejecting defendant's argument that plaintiffs' claims against New Chrysler were a "'direct challenge' to the bankruptcy court's Sale Order, with Plaintiff's state common law claims essentially amounting to 'disguised' bankruptcy claims.").

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assume the liabilities at issue here. *See also supra* fn. 8 (listing certain future liabilities, such as asbestos, a expressly excluded from the assumed liabilities).

D. Transfer to the New York Bankruptcy Court Would Serve Neither the Interests of Justice nor the Convenience of the Parties

"A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Transfers of core bankruptcy proceedings are analyzed under 28 U.S.C. § 1412, but still apply analytical factors considered under § 1404(a), the general transfer provision, which include: (1) plaintiff's choice of forum, (2) convenience of parties and witnesses, (3) location of relevant documents and ease of access to sources of proof, (4) locus of operative facts, (5) availability of process to compel attendance of unwilling witnesses, and (6) relative means of the parties. *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 106-07 (2d Cir. 2006). Judicial efficiency, the ability to receive a fair trial, the state's interest in having local controversies decided within its borders, and the economic administration of the bankruptcy estate are also considered. *See Blanton v. IMN Financial Corp.*, 260 B.R. 257, 266 (M.D.N.C. 2001).

Here, these factors weigh in favor of Plaintiff's original choice of forum. Transfer of this action to New York will have no impact on the administration of Old GM's bankruptcy estate because Plaintiff is asserting claims against New GM it expressly assumed under contract.[23] Judicial economy is served if another court will not be required to familiarize itself with this case, as well as California consumer protection laws. There is also no reason to believe that GM would not receive a fair trial in this Court. Further, California has a strong interest in having this case tried here because the Class includes only California residents.

Convenience of the parties also weighs in favor of this Court. Both parties and the percipient witnesses, including Class Members, are located in either

[23] Although the MTD stresses the importance of the "home court presumption," the location of the debtor's bankruptcy is not a legitimate factor to be considered when ruling on this motion because the debtor is not a party to this action and the outcome of this case will have no impact on the debtor's estate.

California or Michigan, where New GM is incorporated. Were this matter to be litigated in New York, the parties would be required to incur significant travel expenses for themselves, their attorneys, and their witnesses. Although this additional expense might be trivial for an entity as large as New GM—which recently received billions of taxpayer dollars—Plaintiff would rather direct his limited resources to the case at hand and avoid unnecessary expenses. Further, Class Members and the Class Vehicles are all located in California. All of the records maintained by New GM dealers concerning vehicle defects and repairs at issue are located in California. It would serve neither the interests of judicial economy nor convenience of the parties to have to transport them to New York. Accordingly, New GM's venue motion must be denied.[24]

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks this Court to deny GM's Motion to dismiss.

Dated: September 27, 2010 **STRATEGIC LEGAL PRACTICES, APC**

By: /s/
Pavam Shahian
Attorneys for Plaintiff

[24] Finally, New GM is contending that federal bankruptcy jurisdiction exists under §1334(b) because this case is "related to cases under Title 11," and for good reason. The Ninth Circuit holds that the test for determining whether a civil proceeding is "related to" bankruptcy is "whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988) (emphasis in original); *In re Dumont*, 383 B.R. 481, 490 (9th Cir. BAP 2007). An action is "related to" bankruptcy if the outcome could alter "the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *In re Fietz*, 852 F.2d at 457. Here, any recovery against New GM will have no impact on Old GM's bankruptcy estate. And any contention that permitting this proceeding to continue against New GM in this Court may affect the bankruptcy estate on the ground that one might seek recovery with respect to claims that New GM expressly assumed is without merit.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

NOTICE OF ERRATA

Please take notice that the timely filed Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Dismiss or Transfer (Docket No. 28), filed on September 27, 2010, was incorrectly paginated due to an error not detected until after the filing. In that version of the document, the page numbering began at "Page 1" on the first page following the caption page (*i.e.*, the page with the "Table of Contents") and continued consecutively through the last page of the document at "Page 28."

The correctly paginated version of this document, filed herewith, has page numbering beginning at page "i" on the first page following the caption page (*i.e.*, the page with the "Table of Contents"), and this numbering continues through the pages listing the Table of Authorities, ending at page "iii." Following this page, on the page with the "Introduction," page numbering was restarted at "Page 1" and continued consecutively through the last page of the document, at "Page 25." Thus, the "Introduction" begins on "Page 1," whereas in the previous version of the document, the "Introduction" began on Page 4."

The correctly paginated version of the document is filed herewith. The only differences between this version and the version filed on September 27, 2010, are: (1) the page numbering changes described above, (2) the references to the pages in the "Table of Contents," which have been updated to reflect the correct page numbering, and (3) the date of the document was changed to reflect today's filing date.

Also, Plaintiff notes that in footnote 24, the document reads: "Finally, New GM is contending . . . ." This should instead read: "Finally, New GM is not contending . . . ." This change was **not** made in the version of the document filed herewith, as it reflects a change to the content of the document.

DATED: September 28, 2010

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS OR TRANSFER

Hearing Date: October 11, 2010
Time: 10:00 a.m.
Courtroom: 14

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I. INTRODUCTION

General Motors, LLC ("GM," "New GM," or "Defendant") wants it both ways. It asks the Court to interpret the provisions of documents governing sale of assets from General Motors Corp. ("Old GM") to New GM and dismiss Plaintiff's First Amended Complaint ("FAC"), because according to GM, Plaintiff's claims are not the "Assumed Liabilities" of New GM. If this fails, however, GM contends that this Court lacks jurisdiction to rule on Plaintiff's Motion to Dismiss or Alternatively, for Transfer ("MTD"), because Plaintiff's claims are "core proceedings" arising under Title 11 or in a bankruptcy case, and so should be transferred to the New York bankruptcy court. GM is wrong on both counts.

As part of its acquisition of the assets of Old GM in bankruptcy, New GM agreed to assume certain liabilities, including for property damage caused by defects in certain vehicles, regardless of when they were purchased or manufactured, so long as the defects manifest themselves after the close of the acquisition of Old GM's assets. Despite its contentions otherwise, these "Assumed "Liabilities" are more than what is required by express warranty.

Further, responsibility for such liabilities does not flow from principles of successor liability; rather, it arises by New GM's express agreement to be bound. Indeed, New GM can hardly contend it is saddled with Old GM's responsibilities when it continues to perpetuate the same wrongs committed by Old GM: active concealment of a water leak defect and the existence of a Secret Warranty program.

GM should not be allowed to force transfer of this case to the bankruptcy court by manufacturing ambiguity in an otherwise clear agreement. That GM may interpret provisions of its agreement to assume liabilities differently that Plaintiff does not invoke the bankruptcy court's jurisdiction. As explained below, this is not a "core proceeding." Jurisdiction in this Court, not the New York bankruptcy court, is therefore proper, and accordingly, GM's MTD should be denied.

II. STATEMENT OF FACTS

Plaintiff brings this action against GM on behalf of himself and all similarly situated persons ("Class Members") who purchased or leased a Chevrolet Equinox sport utility vehicle ("SUV") of model years 2005 to 2009 and Pontiac Torrent SUV of model years 2006 to 2009 (collectively, the "Class Vehicles"). (FAC ¶ 1.)

On or about July 2009 ("Closing Date"), Defendant acquired the assets of Old GM. (*Id.* ¶ 1.) As part of its acquisition, Defendant expressly agreed (as discussed in more detail below) to assume certain liabilities of Old GM, including liabilities for the Class Vehicles, regardless of when they were purchased, as long as the defect contained in the Class Vehicles manifested itself after the Closing Date. (*Id.* ¶ 2; *see* fn. 6, *infra*.) Separately, Defendant also agreed to comply with the certification, reporting, and recall requirements of NHTSA and similar state laws, which includes California's Secret Warranty Law. (*Id.* ¶ 2.)

As alleged in the FAC, in or around the Closing Date, Defendant immediately became aware that the Class Vehicles contain one or more design flaws and/or structural defects that causes them to be highly prone to water leaks and flooding ("water leak defect"), including but not limited to water leaks that result in damage to the vehicles' front lights and taillights, as well as water leaks into the vehicles' interior cabins, causing mold and electrical failure due to water damaging the computer, electrical system, and interior components of the Class Vehicles. (FAC ¶¶ 3 & 54; *see also id.* ¶ 41.)[1]

Since the Closing Date, Defendant has also known that the water leak defect presents a safety hazard and is unreasonably dangerous to consumers for several reasons, including safety hazards that can result in sudden and catastrophic engine or electrical system failure and mold growth which can trigger numerous health

[1] Defendant acquired its knowledge of the water leak defect through internal sources not available to Class Members, including aggregate data from Defendant's dealers, and from other internal sources. (*Id.* ¶¶ 10 & 40.)

problems. (*Id.* ¶¶ 3, 4-11, 38-39 & 54.) In addition to these safety hazards, the costs of the water leak defect to consumers can be exorbitant because consumers will be required to pay hundreds, if not thousands, of dollars to repair the water leaks and the related damage that it causes. (*Id.* ¶¶ 9, 19, 26-28 & 43-44.)

Despite the fact that it has been fully aware of the water leak defect contained in the Class Vehicles since the Closing Date, Defendant has nevertheless actively concealed and/or failed to disclose the existence and nature of the defect to Plaintiff and prospective Class Members. (*Id.* ¶¶ 10 and 42.) Instead of disclosing its existence, in July 2009, Defendant formally adopted an internal Technical Service Bulletin ("TSB"), a clandestine program in which Defendant acknowledges the existence of the water leak defect to only its dealers and provides a cheaper, albeit temporary, fix: mainly replacing and/or resealing (with a special "3M ™ Ultrapro Autobody Sealant Clear or [its] equivalent") various structural components of the Class Vehicles that are defective, in part, because of insufficient, inadequate, or improperly applied body sealer. (*Id.* ¶¶ 11, 50, fn. 4 & 54-55.) While Defendant normally attributes water leaks to outside influences and does not cover them under warranty (*see, e.g., id.* ¶ 57 fn. 5), Defendant has instructed its dealers to perform the resealing and/or replacement program at no cost to consumers. (*Id.* ¶¶ 14 & 60.) Defendant's clandestine program to temporarily fix the water leak defect with a special sealer, however, is strictly limited to the most persistent customers and only those who visited the dealer and complained loudly enough about the problem. (*Id.* ¶ 15.) In addition, to mollify those consumers who complain loudly enough, in July 2009, Defendant implemented another clandestine program to secretly reimburse or pay for repair costs of those Class Vehicles that suffer from the water leak defect and the related damage that it causes, even when the water leak defect and the related damage that

it causes occurs outside the vehicle's 3-year/36,000-mile express warranty period. (*Id.* ¶ 18, 26 & 59.)[2]

When Defendant adopted these clandestine programs in July 2009, Defendant knew that Old GM had not disclosed the existence of the TSB to consumers, or the California New Motor Vehicle Board, as is required by California's Secret Warranty Law. (*Id.* ¶¶ 48-53.) GM also knew that as a result of having formally adopted this internal bulletin under the Amended and Restated Master Sales and Purchase Agreement ("MPA") (Declaration of Dara Tabesh in Support of Opposition ("Tabesh Decl.") Ex. 1) and pursuant to California's Secret Warranty Law it had a duty (after its acquisition of Old GM's assets and liabilities) to immediately disclose the TSB to the various entities and failed to do so. (*Id.* ¶¶ 2 & 12.) Despite this knowledge, GM did not notify Plaintiff or Class Members about its cost-free repairs and reimbursement program (*e.g.*, replacement of interior carpets, as well as other components within the vehicle damaged by the water leak defect). (*Id.* ¶¶ 62-63.) Thus, by its conduct, GM violated the California Secret Warranty law. (*Id.* ¶¶ 48-66.)

III. ARGUMENT

A. Plaintiff's Claims Are the "Assumed Liabilities" of GM

1. New GM Assumed Liabilities for the Economic Loss Suffered by Plaintiff and Prospective Class Members

In a misguided attempt to distract the Court from the most pertinent issues, Defendant repeatedly invokes provisions in its Order Authorizing Sale of Assets ("Sale Approval Order") (Tabesh Decl. Ex. 2) and MPA (collectively, the "Closing Documents") related to "express warranty" law. (*See, e.g.*, MTD at 2:4-6, 2:26-28

[2] For example, Defendant refused to replace Plaintiff's indoor carpeting damaged by the water leak defect while agreeing to replace or reimburse the floor carpeting and other similar items which is similar to the manner in which Defendant deals with the most persistent customers who complain loudly enough. (FAC ¶¶ 25-28.)

(fn.1), 5:5-8, 6:3-6 & 7:9-13.) Plaintiff, however, is not bringing a breach of express warranty claim; Plaintiff brings claims for violations of the CLRA and the UCL, which transcend the law of warranty.[3] Despite GM's contention that it can only be liable for breach of express warranty claims after the Closing Date, it cannot avoid liability for that which it has assumed under the Closing Documents. (Sale Approval Order ¶¶ 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 . . . ." (emphasis added)); ¶ 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 . . . ." (emphasis added)); ¶ 9 ("[N]o claims other than Assumed Liabilities, will be assertable against the Purchaser . . . ."); *see also id.* ¶¶ 10, 46-48 & 52; MPA §§ 2.3(a) & 9.19.) Indeed, when purchasing the assets of Old GM, Defendant was provided assurance that it would not be forced to deal with certain claims that would otherwise be brought against Old GM: "Effective upon the Closing . . . 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…proceeding against the Purchaser…or the Purchased Assets, with respect to any (i) claim against the Debtors *other than Assumed Liabilities* . . . ."

[3] Indeed, the California legislature passed the CLRA and the UCL in large part because traditional warranty and tort doctrines did not provide consumers sufficient legal remedies.

(Sale Approval Order ¶ 47 (emphasis added).) As explained below, Plaintiff's claims are the "Assumed Liabilities" of New GM.[4]

a) By its express terms, the MPA and Sale Approval Order cover damage to the Class Vehicles

Incredibly, GM argues that "because plaintiff's nondisclosure claims are not claims for wrongful death, personal injury or property damage 'arising directly from accidents or incidents or other distinct and discreet [sic] occurrences that happen on or after the Closing Date,' the only product liabilities New GM agreed to assume, see MPA § 2.3(a)(ix),[5] paragraphs 8, 46 and 47 of the Sale Approval Order expressly enjoin plaintiff from asserting these claims against New GM." (MTD 2:7-12.) This is a gross mischaracterization of Plaintiff's claims. Plaintiff's FAC is replete with allegations of "property damage" that arose "after the Closing Date" and which arose "directly from accidents or incidents or other distinct and discrete occurrences that happen on or after the closing date."

Plaintiff alleges that the Class Vehicles are damaged because they are "highly prone to water leaks and flooding . . . including but not limited to water leaks that result in flooding of the trunk and spare tire well, water leaks that result in damage to the vehicles' front lights and taillights, as well as water leaks to the car's interior cabin, causing mold and electrical failure due to the water damaging the computer, electrical system, and interior components of the Class Vehicles." (FAC ¶ 3; *see also id.* ¶ 5 ("The water leak defect is also known to cause tail lights to fail or

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[4] As discussed below, in a separate provision that Defendant failed to discuss in its motion, New GM also agreed to be bound by California's Secret Warranty law. (*See, e.g.*, Sale Approval Order ¶ 17.)

[5] The Assumed Liabilities under MPA § 2.3(a)(ix) are described as: "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 . . . which arise directly out of accidents, incidents or other distinct and discreet [sic] occurrences that happen on or after the Closing Date and arise from such motor vehicles' operation or performance . . . ."

malfunction."); ¶ 6 ("[T]he water leak defect . . . can promote mold growth."); ¶¶ 19-21 and 87-90.) Indeed, Plaintiff's vehicle was "damaged" by the water leak defect. For example, in December 2009 and during the express warranty period, Plaintiff's daughter "noticed a pungent odor emanating from the vehicle that caused her light headaches and breathing difficulties." (FAC ¶ 23.) She later noticed that the rear passenger and driver side seat of the vehicle were all wet. (*Id.* ¶ 23.) When she complained and attempted to repair the problem, the first GM dealer told her to "just air it out" and that "it happens here all the time." (*Id.* ¶ 24.) Not satisfied with that response, Ms. Mendoza visited a second GM dealer, who verified the water leak, and noted the presence of mold, which was causing a mildew odor in the vehicle, but did not provide Plaintiff with the fixes that Defendant had outlined in its clandestine TSB program. (*Id.* ¶¶ 24 & 26.) The dealer also refused to replace the moldy carpets. (*Id.* ¶ 26.) Plaintiff and his daughter were ultimately forced to pay out of pocket to repair the damage caused by the water leak defect. And despite paying to fix the problems, the vehicle continues to smell like mildew and continues to experience other problems associated with the water leak defect. (*Id.* ¶¶ 27 & 28; *see also id.* ¶ 41.) These show without a doubt that Class Members have suffered and continue to suffer "property damage" due to the water leak defect.

Further, Plaintiff's Class definition specifically excludes "all claims for out-of-pocket water leak defect related expenses that were incurred prior to July 2009. (*Id.* ¶ 72.) Indeed, the above-referenced allegations of damage to Plaintiff's vehicle (as well as his daughter's personal property) occurred in December 2009. (*Id.* ¶ 23.) Plaintiff even cites to NHTSA complaints of damage caused by the water leak defect after the Closing Date. (*See, e.g., id.* ¶ 41 at 10:17-11.4) ("*On Jan. 11, 2010*, I started my car to let it warm up . . . . the car shut down and all of the warning lights on the dashboard came on . . . water had leaked down the right front passenger side of the window, freezing, thawing and backing up which got to the wiring and burnt it out." (emphasis added).)

Indeed, GM is wrong to contend that "the Sale Approval Order bars plaintiff's claims in their entirety, including claims for reimbursement of expenses incurred after the Closing Date, because, among other things, the alleged design defect clearly i) '*relates to the production of vehicles prior to the Closing Date . . . .*'" (emphasis added) (citing Sale Approval Order ¶ 46).) The threshold question is not whether the vehicles were manufactured before the Closing Date, but rather, whether the incidents (*i.e.*, manifestation of the defect) giving rise to liability arose after the Closing Date. As Judge Gerber of the Bankruptcy Court noted in ruling on the sale of assets that gave rise to New GM and objections thereto, the Assumed Liabilities include "*all* product liability claims arising from accidents or other discrete incidents arising from operation of GM vehicles occurring subsequent to the closing . . . *regardless of when the product was purchased*." *In re GMC*, 407 B.R. 463, 482 (2009) (emphasis in original) (Tabesh Decl. Ex. 3). By this logic—and contrary to GM's assertion otherwise—GM maintains liability for defects in vehicles manufactured and sold before the Closing Date so long as the facts giving rise to these claims occur after the Closing Date.[6] Here, Plaintiff limits its allegations to such occurrences.

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[6] Indeed, had the Closing Document drafter intended to exclude these types of claims, they would have done so expressly. No fewer than 16 "Retained Liabilities" of Old GM are listed, and they do not include such claim types. (*See* MPA § 2.3(b).) The only plausibly relevant clause is, "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 . . . ." (*Id.* § 2.3(b)(xvi).) Plaintiff, however, has dropped his implied warranty claim, Cal. Civ. Code § 1791.1, and his CLRA and UCL claims are not *implied* common law or statutory obligations related to any warranty, they are *express* obligations that transcend the law of warranty. Moreover, the MPA also clarifies impermissible claim that can arise after the Closing Date. (*See id.* § 2.3(a)(ix) ("[F]or 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."); *see also* Sale Approval Order ¶¶ 8 & 62.)

Finally, Plaintiff's allegations also cover "distinct and discreet [sic] occurrences." (MPA § 2.3(a)(ix).) Indeed, Defendant can hardly contend that Plaintiff's allegations of the water leak defect that manifested after the Closing Date and resulted in damage to the interior of a vehicle's cabin or damage to a vehicle's tail lights due to flooding, does not reflect "distinct and discrete occurrences."

b) Non-Disclosure and active concealment of material information resulting in economic loss are actionable

Defendant's argument that the occurrences disclosed in Plaintiff's allegations, and by consequence Plaintiff's CLRA and UCL claims, cannot be covered under the terms of the Closing Documents because these are claims for "*non-disclosure* of an alleged defect causing *economic loss*," (MTD at 12:10-11 (emphasis in original)), lacks merit on at least two counts.

First, even though non-disclosure of a material defect at the time of purchase and lease may not be actionable under the terms of the Closing Documents if these occurred prior to the Closing Date,[7] active concealment by New GM of these same defects or the existence of a Secret Warranty program after the Closing date gives rise to liability for New GM. New GM cannot avoid liability, as it hopes to do, if it perpetuates the same or similar wrongs as Old GM by actively concealing a defect that should have been disclosed at the time of repair, or a Secret Warranty Program that should have been disclosed when it was adopted. *See Ehrlich et al. v. BMW of North America, LLC*, No. 2:10-cv-01151, slip op. at 16:11-17:8 (C.D. Cal. Aug. 11, 2010) (failure to disclose the existence of a secret warranty program is active concealment in violation of plaintiff's fraud-based CLRA and UCL claims) (Tabesh Decl. Ex. 4). For example, here, New GM's failure to disclose the secret warranty program with the available fixes which it adopted in July 2009 to Plaintiff

[7] With respect to Defendant's failure to disclose the water leak defect at the time of purchase, Plaintiff's allegations are directed only at those consumers who purchased the Class Vehicles (most likely as used vehicles) after the Closing Date.

violated the CLRA. (FAC ¶¶ 24-25.) Indeed, Plaintiff has alleged that her vehicle continues to smell of mildew, a problem that apparently Defendant has attempted to secretly remedy in a revised TSB, but has so far failed to inform or make available to Plaintiff and class members. (*See infra* fn. 10.)

Second, Defendant provides no support for its counterintuitive assertion that "injury to Persons or damage to property"[8] is not compensable as an "economic loss." (MTD at 12:8-13:11.) Even if Plaintiff is making allegations of "economic loss," this loss flows directly from the injury to the Class Members and damage to the Class Vehicles. *Cf. Ryan v. Foster & Marshall, Inc.*, 556 F.2d 460, 464 (9th Cir. 1977) (distinguishing actual damages from mental suffering and punitive damages and noting that "[a]ctual damages mean some form of economic loss"); *Rich Prods. Corp. v. Kemutec, Inc.*, 241 F.3d 915, 918 (7th Cir. 2000) ("Recovery of economic loss is intended solely to protect purchasers from losses suffered because a product failed in its intended use."). The fact that Plaintiff and Class Members have been forced to pay out of pocket for repairs that should have been performed under Defendant's Secret Warranty Program reflects an "economic loss" under any plausible definition of the term.

2. **New GM must comply with the reporting requirements of the California Secret Warranty Law**

a) Plaintiff has adequately alleged the existence of a secret warranty adjustment program.

As discussed extensively in the FAC, GM's secret warranty adjustment program qualifies as an unlawful "adjustment program" as that phrase is defined by

[8] Presumably, GM recognizes it would be responsible for personal injury claims that arose after the Closing Date due to a defect in its vehicles that existed at the time of purchase. Yet, based on positions taken in its MTD, GM believes it would have no responsibility to repair or compensate for repair to property damage caused by such a defect; nor would it have responsibility to repair or compensate for repair of the defect that caused such personal injury.

the clear and straightforward language of California's Motor Vehicle Warranty Adjustment Programs Act ("MVWAPA," also known as the "Secret Warranty Law"), Cal. Civ. Code § 1795.90 *et seq.* (FAC ¶¶ 10-12 and 48-66.)

The Secret Warranty Law imposes certain duties on vehicle manufacturers. Among these is to notify consumers about the covered "condition" and the "terms and conditions of the program." Cal. Civ. Code § 1795.92. Plaintiff has alleged that while GM does not normally cover damage caused by water leaks under its warranty, in July 2009, it formally adopted an internal bulletin that was distributed to only its dealers in which it acknowledged the existence of the water leak defect, identified multiple causes, and provided various fixes for each of these causes. (FAC ¶ 54.) Typically, Defendant does not cover fixes or repairs related to the water leak defect because Defendant or its authorized dealers for vehicle repairs generally tell consumers that the water leak defect occurs as a result of outside influences. (*Id.* ¶ 57.) Nevertheless, in certain instances, Defendant has offered, pursuant to the TSB, to extend its warranties to cover repairs related to the water leak defect. (*Id.*)

GM does not dispute the fact that it never gave notice to Plaintiff or the prospective Class Members of its secret TSB program.[9] Indeed, under California's Secret Warranty Law, GM should have notified all Class Members of the conditions that give rise to repairs related to the water leak defect, including those Class Members who incurred out-of-pocket costs for water leak defect repairs prior to acquiring knowledge of the program. *See* Cal. Civ. Code §1795.92 ("A manufacturer who establishes an adjustment program shall implement procedures to assure reimbursement of each consumer . . . who incurs expenses for repair of a condition prior to acquiring knowledge of the program."). Here, GM failed to

[9] *See Morris v. BMW*, 2007 U.S. Dist. Lexis 85513, at *18 (N.D. Cal. 2009) ("Defendants do not deny that they failed to inform the public of the of the adjustment program stemming from the TSB. Thus, Plaintiffs have successfully alleged violations of the Secret Warranty Act.").

notify Plaintiff (or any other Class Members) of the TSB program or to "implement procedures" that would have reimbursed Plaintiff or other prospective Class Members for their repairs related to the water leak defect.

Furthermore, in addition to the TSB program that GM adopted in July 2009,[10] Plaintiff has alleged that after July 2009, to mollify those consumers who complained loudly enough, GM adopted another secret program where it reimbursed or paid for the costs of repairing the water leak defect and the related damage that it causes, regardless of whether these problems arose within the vehicle's warranty period. (FAC ¶¶ 15, 18, 25 & 76.) Again, GM did not notify Plaintiff or any other Class Member of these programs. (*Id.* ¶¶ 62-63.) Thus, by extending its warranty to cover the costs related to the water leak defect and the property damage caused by it (and by doing so even if that warranty had expired), GM has expanded or extended the consumer's warranty beyond its stated limits in violation of the Secret Warranty law. (*Id.* ¶¶ 57-60.)

Moreover, GM's decision to offer free repair[11] outside the vehicle's New Car Warranty is not done on an *ad hoc* basis. (*Id.* ¶ 59.) Rather, it is made pursuant to a systematic policy—communicated to, *inter alia*, regional offices, dealers, and GM customer care personnel—designed to pacify the most vocal consumers. (*Id.*)

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[10] Plaintiff relies on TSB No. 08-08-57-001A to show the details of GM's secret warranty program adopted in July 2009. (*See* FAC ¶ 54.) A more recent version of this, TSB No. 08-08-57-001B, dated January 13, 2009," expands the secret TSB program to include "a mildew odor condition repair." (Tomasek Decl. Ex. 2 (filed concurrently with GM's MTD) at 1.)

[11] GM suggests that "none of these TSBs provides for 'free' repairs or, indeed, says anything at all about payment for the repairs or whether or not they are covered under Old GM's standard repair warranty." (MTD at 6:4-6 (emphasis removed).) Plaintiff, however, has alleged that these repairs are covered under warranty and/or provided outside the warranty for those customers who complain loudly enough. (FAC ¶ 14.) Moreover, it is interesting to note that neither Defendant's litigation counsel nor corporate counsel's declarations states under oath that these repairs were not covered under warranty. Nevertheless, this is a question of fact inappropriate for determination at the pleadings stage.

Plaintiff has offered examples of consumers suffering damage related to the water leak defect but nevertheless being denied this coverage. (*See, e.g.*, FAC ¶¶ 25-26, 41; *see also id.* fn. 5.)

Further, GM's contention that its water leak defect repair program is not "secret" because these TSBs can be found by a simple Google search is to no avail. (MTD at 6:11-15.) Even if true, a reasonable consumer cannot be charged with such knowledge. As the *Falk* court explained, "It is true that the prospective purchasers, with access to the internet, could have read the many complaints . . . [However,] many consumers would not have performed an internet search before beginning a car search. Nor were they required to do so." *Falk v. General Motors Corp.*, 496 F. Supp. 2d 1088, 1097 (N.D. Cal. 2007); *see also In re Tobacco II Cases*, 46 Cal. 4th 298, 328 (2009) ("[A]llegation of reliance is not defeated merely because there was alternative information available to the consumer-plaintiff, even regarding an issue as prominent as whether cigarette smoking causes cancer."). Here, as explained below, GM was under a duty to disclose and actively concealed the existence of its Secret Warranty program. Plaintiff and Class Members cannot be charged with knowledge of the TSBs—let alone a Secret Warranty program—merely because GM's TSBs can be found on the Internet.[12]

In *Marsikian v. Mercedes Benz USA, LLC*, 2009 U.S. Dist. LEXIS 117012, No. 2:08-04876 (C.D. Cal. May 4, 2009) (Hon. Judge A. Howard Matz presiding) (Tabesh Decl. Ex. 5), the court addressed the pleading of a UCL unlawful claim based on a violation of the Secret Warranty Law, denied Mercedes' motion to

[12] Indeed, the legislative history to the Secret Warranty Law emphasizes this point: "According to supporters of the bill, manufacturers to avoid recalls—either because the defect is minor or to avoid publicity and higher costs—often issue *"technical service bulletins"* to their dealers. Copies of these service bulletins are sent to NHTSA; whether or not they are safety related, but not directly to the owners of the cars. Consumers in the market for a new car are in the dark . . . ." (Senate Committee on Judiciary, 1993-94 Session (SB 486) at 3-4 (emphasis added) (Tabesh Decl. Ex. 6).) Thus, it is clear that the Secret Warranty Law is designed to prevent the exact conduct Plaintiff alleges regarding GM.

dismiss for failure to state a claim. The class action plaintiffs in *Marsikian* alleged: that the defendant had issued two TSBs and devised a policy of providing "temporary fixes" for an alleged defect, which constituted a warranty adjustment program under the MVWAPA because maintenance of the defect part was not covered under the original warranty; that defendant extended the warranty even further by repairing and reimbursing defect related damages for the most vocal complaining customers as "good will adjustments" or "policy adjustments;" that plaintiffs were not informed of the adjustment program; and that when plaintiffs requested a free repair or replacement they were refused. *Marsikian*, slip op. at 9-10. The district court found these allegations to be adequate to state a UCL claim based on a violation of the Secret Warranty Law. *Id.* Plaintiff's allegations in the instant case are substantially similar to the allegations that the *Marsikian* court found to be sufficient, and GM's Motion to Dismiss should similarly be denied.[13]

b) **Under the Closing Documents, GM's Secret Warranty program must be reported to the Class Members**

Despite Defendant's contention that it is not bound by California's Secret Warranty Law, the MPA compels otherwise:

> 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

[13] With respect to GM's argument that Plaintiff's claims for injunctive relief are preempted by the NHTSA (*see* MTD at 4 fn. 3), *Marsikian* also finds under factually similar circumstances that conflict preemption does not bar a recall remedy under state law. *Marsikian*, slip op. at 11-12 (citing *Chamberlan* v. *Ford Motor Co.*, 314 F. Supp. 2d 952 (N.D. Cal. 2004) ("Defendant has not shown that preemption doctrine would bar a recall remedy."). Moreover, regardless of the Court's power to order a recall, Plaintiff has requested a range of remedies that does not necessarily include a recall. In addition to seeking damages, Plaintiff has requested injunctive relief available under the UCL and CLRA, including an order requiring GM to comply with California's Secret Warranty Law. *See id.*

> 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.

(MPA § 6.15 (a)). Here, the MPA clearly invokes a series of laws designed to promote public interest and safety, including "the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Safety Act . . . ." (*Id.*) This clause then goes on to capture "similar Laws."[14] By any reasonable interpretation, given the similarity of the California Secret Warranty Law to the acts and requirements cited in § 6.15(a) and ¶ 17 of the Sales Approval Order, the broad and expansive definition of Law in § 1.1, and California law's requirement that a Secret Warranty must be reported within 90 days of adoption, California Secret Warranty Law § 1795.90(a), taken with Plaintiff's allegation that GM's secret TSB program was adopted in July 2009 (FAC ¶ 54 & fn. 4), the only reasonable conclusion is that the after the Closing, New GM violated California's Secret Warranty Law when it failed to disclose its adopted Secret Warranty program to prospective Class Members. Indeed, by making the argument that Plaintiff's Secret Warranty Claim may amount to a recall, New GM has admitted that California's Secret Warranty Law is covered by this provision because it is similar to the certification, reporting and recall requirements of NHTSA.

B. Plaintiff Does Not "Saddle" New GM With Old GM's Liabilities

Defendant repeatedly complains that Plaintiff's claims "represent an improper attempt to fasten successor, transferee, derivative or vicarious liabilities on New GM. (MTD at 8:24-25 (citations and quotations omitted).) As explained above,

[14] The MPA defines "Law" as "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." (MPA § 1.1 (Defined Terms).)

however, Plaintiff's claims are proper because they represent Assumed Liabilities of New GM, *i.e.*, they are not brought under any theory of successor, transferee, derivative, or vicarious liability, because New GM agreed to assume them. Plaintiff's claims are valid because Plaintiff has alleged active concealment of the water leak defect and the Secret Warranty Program from Plaintiff and Class Members *after the Closing Date*, and these allegations satisfy the pleading requirements for claims brought under the CLRA and the UCL.

Under California law, a duty to disclose material facts may arise when the defendant actively conceals a material fact from the plaintiff.[15] *See Falk*, 496 F. Supp. 2d at 1094-96 (citation omitted).[16] While GM declines to address in its papers the notion that active concealment creates a duty to disclose, Plaintiff has alleged sufficient facts here creating an independent basis for GM's duty to disclose. Plaintiff alleges that GM actively concealed the water leak defect by withholding information about the systematic nature of the problem from consumers, and where GM has attempted to repair the water leak defect, that GM did so in a manner that would temporarily repair the problem, leaving consumers with defective vehicles that are likely again to experience the water leak defect

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[15] Under California law, a duty to disclose material facts may also arise in the following circumstances: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; or (3) when the defendant makes partial representations but also suppresses some material fact. *Falk*, 496 F. Supp. 2d at 1094-96 (citation omitted).

[16] Material facts may include, but are not limited to, unreasonable safety defects, *see, e.g.*, *id.* at 1096 (explaining that defect to speedometer causing drivers to travel at unsafe speeds is material), and monetary costs associated with such defects (including the inconvenience of repeated repairs and replacement costs), *Marsikian*, slip op. at 9; *see also Ehrlich*, slip op. at 16:11-18 (same). Here, Plaintiff has satisfied the pleading requirements for materiality. The FAC alleges the materiality of the water leak defect, including the costs for repairs related to the water leak defect, (FAC ¶¶ 9, 28, 42 & 43), the need for repeated repairs or replacements, (*id.* ¶¶ 16, 17, & 21), and the significant safety dangers posed by the water leak defect, (*see, e.g.*, *id.* ¶¶ 4-8).

outside the warranty period, the consequent damage caused by water leaks, and the associated safety hazards. (FAC ¶¶ 16-17.) *See Falk*, 496 F. Supp. 2d at 1097 (explaining that an automaker's replacement of defective parts with the same defective model constitutes concealment of a systematic problem). Additionally, GM actively concealed the water leak defect by providing free repairs to consumers who complained loudly without disclosing the full nature of the program to general public. (*Id.* ¶¶ 48, 56, 58-59 & 62-63.) *See Marsikian*, slip op. at 8 (allegations that automaker extended secret "good will adjustments" to consumers who complained loudly enough, without disclosing the full nature of the problem to the general public, indicated active concealment in violation of the CLRA); *see also Ehrlich*, slip op. at 16:11-17:8 (same.)

Defendant cannot contend that it has no liability because the water leak defect arose from a design defect that was present before the closing date. (*See* MTD at 3:1-8.) All Assumed Liabilities invoked in Plaintiff's claims relate to harms that arose after the Closing Date. New GM is liable for such harms.

C. This Federal Bankruptcy Court Does Not Have Jurisdiction Over This Case

Like other federal courts, bankruptcy courts are courts of limited jurisdiction. *In re Johnson*, 960 F.2d 396, 399 (4th Cir. 1992). As such, "[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994) (citations omitted).

Only the Constitution and federal statutes can confer subject matter jurisdiction on federal courts. *Id.* 28 U.S.C. § 1334 confers bankruptcy jurisdiction and provides that "the district courts shall have original and exclusive jurisdiction of all cases under title 11." *Id.* § 1334(a). "Cases under title 11" refers merely to bankruptcy petitions themselves. *In re Marcus Hook Dev't Park, Inc.*, 943 F.2d 261, 264 (3d Cir. 1991). Because this case does not involve a bankruptcy

petition, but rather a consumer class action alleging state law causes of action, the Court must examine subsection (b), which provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11." 28 U.S.C. § 1334(b).

In addition to "cases under title 11," the district courts may refer to the bankruptcy court proceedings that (1) "arise under" the Bankruptcy Code, (2) "arise in" a case under the Bankruptcy Code, or (3) "relate to" a case under the Bankruptcy Code. *Id.* § 157(a). Such delegation to non-Article III tribunals, however, has its limitations. *See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). As non-Article III tribunals, bankruptcy courts may "hear and determine," and thus issue dispositive orders in "all core proceedings arising under title 11, or arising in a case under title 11 . . . ." 28 U.S.C. § 157(b)(1).[17] A bankruptcy court, however, may not issue dispositive orders in non-core proceedings that are otherwise related to a case under title 11 unless the parties involved in the proceeding consent. *Id*. § 157(c).[18]

To determine whether a proceeding "arises under" title 11, courts apply the same test used for deciding whether a civil action presents a federal question under 28 U.S.C. § 1331. *See In re Wood*, 825 F.2d 90, 96-97 (5th Cir. 1987). Thus, "arising under" jurisdiction in bankruptcy matters extends to "only those cases in which a well-pleaded complaint establishes either that federal [bankruptcy] law creates the cause of action or that the plaintiff's right to relief necessarily depends

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[17] While the Bankruptcy Code is not clear, commentators believe that the term "core" refers to "arising in" or "arising under" proceedings collectively. *See* 3 David G. Epstein et al., Bankruptcy § 12-2 at 203 (1992).

[18] Here, while Defendant does not contend that this is a related non-core proceeding—because it is not—Plaintiff nevertheless advises the Court that he will not consent to the Bankruptcy Court's jurisdiction in this matter, nor will he waive his right to a jury trial. *See In re Cinematronics*, 916 F.2d 1444, 1451 (9th Cir. 1990) ("[W]here a jury trial is required and the parties refuse to consent to bankruptcy jurisdiction, withdrawal of the case to the district court is appropriate.").

on resolution of a substantial question of federal [bankruptcy] law." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983).

Unquestionably, Plaintiff's state law claims against Defendant do not arise under federal law. While at best Defendant may assert a defense arising from the scope of an order issued by the bankruptcy court, a case cannot be transferred "to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." *Caterpillar v. Williams*, 482 U.S. 386, 393 (1987).[19] Therefore, this consumer class action case does not present a question of federal law that would support "arising under" jurisdiction.

1. Plaintiff's state law claims are not core proceedings because they do not arise under title 11 or in a case under title 11

Generally, "a core proceeding is a legal dispute between parties in interest to a bankruptcy case, one of whom is almost always the debtor. As fixed by the very nature of the parties' relationships to the debtor and the relief requested, core proceedings are those intrinsic to the adjustment of debtor-creditor relationships involved in bankruptcy relief." *Marine Iron Co. et al. v. City of Duluth*, 104 B.R. 976, 980 (Bankr. Minn. 1989); *see also, e.g., In re Int'l Nutronics*, 28 F.3d 965,

[19] While the Supreme Court has concluded that the preemptive force of some federal statues is so strong that they completely preempt an area of state law, *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987), no court has ever held that 11 U.S.C. § 363 grants exclusive jurisdiction to the federal bankruptcy court to interpret its provisions. Indeed, the Supreme Court has construed only three federal statues to preempt their respective fields so as to authorize removal and transfer of actions seeking relief exclusively under state law. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6-11 (2003) (Section 301 of the Labor Management Relations Act; Section 502 of ERISA; and Sections 85 and 86 of the National Bank Act); *see also Winn v Chrysler Group, LLC*, 2009 WL 5206647 (E.D. Cal. 2009) (Tabesh Decl. Ex. 7) (denying Chrysler's motion to remove and transfer plaintiffs' California state law claims to the federal bankruptcy court in New York because the interpretation of the bankruptcy court's free and clear sale order was at best an affirmative defense that did not provide the bankruptcy court with jurisdiction).

969 (9th Cir. 1994) ("Core proceedings are matters concerning the administration of the estate and rights created by title 11."); *In re Harris Pine Mills,* 44 F. 3d 1431, 1435 (9th Cir. 1995) ("If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding.").

Here, none of Plaintiff's state law claims can be classified as core proceedings. Plaintiff's case is a consumer action between two parties, neither of which was a debtor or a petitioner for bankruptcy relief in Old GM's Bankruptcy case, and neither of which was a scheduled creditor or claimant against Old GM's bankruptcy estate. Further, Old GM is not a party to this action. And finally, none of Plaintiff's claims fall within any of the more specific examples of core proceedings set forth in 28 U.S.C. §§ 157(b)(2)(A)-(P).

Nonetheless, Defendant incorrectly argues that "plaintiff's entire pleading is nothing more than an attempt to fasten successor liability on New GM in violation of the Sale Approval Order" (MTD at 10:12-13), and because Judge Gerber had jurisdiction to enter the Sale Approval Order pursuant to section 363 and to enforce its provisions, "the prosecution of this action in violation of the Sale Approval Order is also a core proceeding" (MTD at 14:20-24.)

Defendant's reliance on *In re Eveleth Mines, LLC,* 312 B.R. 634, 644-45 (Bankr. D. Minn. 2007), to support this point is misplaced. There, the parties had each consented to the bankruptcy court's jurisdiction from the initiation of proceedings through the time of the purchaser's motion on the merits. *Id.* at 643. Weeks later, however, defendant challenged the court's jurisdiction. *Id.* The Bankruptcy Court, in finding that the case should continue under its jurisdiction, noted that prior to this, defendant "gave every indication of being content with having the Bankruptcy Court pass on the substantive issue." *Id.*

Here, however, Plaintiff never availed himself of or consented to the bankruptcy court's jurisdiction. More significantly, prior to the defendant

challenging jurisdiction, the purchaser in *In re Eveleth Mine* filed an adversary proceeding asking the Bankruptcy Court to interpret the "free and clear" language of its sale order to determine whether or not the purchaser, as a successor in interest, could be liable for certain taxes relating to the debtor's pre-sale production. *Id.* at 640-42. Plaintiff here, however, has not filed an adversary proceeding and is not seeking to challenge or interpret the bankruptcy court's "free and clear" sales order (11 U.S.C. § 1363) under a successor liability or any other theory.[20] Rather, Plaintiff is only attempting to enforce state law consumer protection claims that New GM expressly assumed through contract. *See id.* at 638 fn. 3 (noting that the "identity of the 'assumed liabilities' [was] not relevant to the matter at bar").

Winn, 2009 WL 5206647, is instructive. In *Winn*, after plaintiff dismissed his successor liability claims, defendant Chrysler argued that the sale of old Chrysler's assets, as approved by the bankruptcy court, was a core proceeding and that plaintiff's complaint, which challenged the bankruptcy court's order with state common law claims, amounted to "disguised bankruptcy claims" that should be transferred to the New York bankruptcy court. *Id*. at *3. In denying Chrysler's motion to transfer and remanding the matter to state court, the court reasoned that plaintiff's claims were for indemnity arising from new Chrysler's obligations to its dealers for certain assumed agreements—obligations New Chrysler expressly assumed when it purchased Old Chrysler's assets" (*i.e.*, "assumed liabilities"). *See id.* at **3-4.[21] Consequently, the court held that plaintiff's state law claims were

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[20] *But see Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 163 (7th Cir. 1994) (suggesting that section 363(f) applies only to secured creditors—"liens and other encumbrances;" and further suggesting that section 363(f) cannot be employed to grant federal courts jurisdiction under 28 U.SC. § 1334 and extinguish a successor liability claim).

[21] *See* Chrysler LLC et al. Sale Approval Order: *Old Carco LLC f/k/a Chrysler LLC*, No. 09-5002 (Bankr. S.D.N.Y. May 20, 2009) (Docket No. 3232) ("[T]he purchaser shall not have any successor liability (*other than with respect*

not "core bankruptcy claims" because they were not unique to or uniquely affected by the bankruptcy proceedings and did not directly affect "core bankruptcy functions." *Id*.

Despite this adverse ruling, defendant Chrysler brought a motion for reconsideration, arguing that the federal court had jurisdiction under 28 U.S.C. § 1334(b), because Chrysler did not "expressly assume liabilities" arising from a dealership agreement reached with one of the dealership defendants. *Winn v. Chrysler Group*, LLC, 2010 WL 1416749, at **1-2 (E.D. Cal. 2010) (Tabesh Decl. Ex. 9). Again, in rejecting Chrysler's motion to transfer and remanding the matter to state court, the court held that "Plaintiffs' lawsuit asserts claims sounding exclusively in state law [and] to the extent that a that a bankruptcy defense is appropriate, there is no reason why the defense cannot be asserted in state court." *Id.* at *3. The court also stated that the bankruptcy debtor, Old Chrysler, was not even a party to the lawsuit, and in the absence of the successor claims, New Chrysler had not demonstrated how the indemnity claims would impact the handling of the Bankruptcy state. *Id.* at *4. Significantly, the court, noting that plaintiffs' indemnity claims against Chrysler were based on liabilities that "Chrysler already assumed," distinguished the case from other district court decisions arriving at a contrary result because in those cases, there was no indication that a purchaser of assets had assumed any liabilities. Instead, those cases were grounded in successor liability theories, a factor not at issue in the *Chrysler* case. *Id*. at *3 fn. 4.

Similarly, here, to the extent New GM contends that Old GM's bankruptcy is implicated by Plaintiff's claims, there is no reason why it cannot assert its bankruptcy defense in this Court.[22] And because Plaintiff expressly excluded all

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to any obligations arising under the Assumed Agreements from and after the Closing.") (emphasis added) (Tabesh Decl. Ex. 8).

[22] Moreover, here, unlike *Winn*, there is not even an express provision that New GM can point to as a defense that can demonstrate that it did not agree to

claims that arose prior to the Closing Date, there is little doubt that New GM's alleged bankruptcy defense reflects nothing more than improper forum shopping, which, if taken to its logical end, would result in all state law claims brought against New GM being dismissed or transferred to the Bankruptcy Court of New York, no matter where they are filed, so long as New GM contends it has a different interpretation of the claims it assumed or did not assume by contract.

2. Plaintiff's claims are not grounded in theories of successor liability because they implicate GM's "assumed liabilities"

Defendant's claim that "plaintiff's entire pleading is nothing more than an attempt to fasten successor liability on New GM in violation of the Sale Approval Order" (MTD at 10:10-13), is a gross mischaracterization devised to confer jurisdiction on the Bankruptcy Court of New York where none exists. New GM is completely aware that the bankruptcy court in New York has no jurisdiction over Plaintiff in this matter unless it can convince this Court that Plaintiff is in violation of the Sale Approval Order, a contention New GM makes by asserting that Plaintiff is attempting to "[f]asten successor liability on New GM in violation of the Sale Approval Order." However, Plaintiff's state law claims relate only to those claims New GM expressly assumed under the MPA, not any claim that the bankruptcy court expressly discharged as part of the Sale Approval Order. Manufacturing ambiguity in an otherwise clear agreement should not be a basis for a defendant to seek dismissal of a case on jurisdictional grounds. GM's attempt to do so here to avoid liability for claims it expressly assumed is disingenuous and improper. *See also Winn*, 2009 WL 5206647, at *3 (rejecting defendant's argument that plaintiffs' claims against New Chrysler were a "'direct challenge' to the bankruptcy court's Sale Order, with Plaintiff's state common law claims essentially amounting to 'disguised' bankruptcy claims.").

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assume the liabilities at issue here. *See also supra* fn. 8 (listing certain future liabilities, such as asbestos, a expressly excluded from the assumed liabilities).

D. Transfer to the New York Bankruptcy Court Would Serve Neither the Interests of Justice nor the Convenience of the Parties

"A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Transfers of core bankruptcy proceedings are analyzed under 28 U.S.C. § 1412, but still apply analytical factors considered under § 1404(a), the general transfer provision, which include: (1) plaintiff's choice of forum, (2) convenience of parties and witnesses, (3) location of relevant documents and ease of access to sources of proof, (4) locus of operative facts, (5) availability of process to compel attendance of unwilling witnesses, and (6) relative means of the parties. *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 106-07 (2d Cir. 2006). Judicial efficiency, the ability to receive a fair trial, the state's interest in having local controversies decided within its borders, and the economic administration of the bankruptcy estate are also considered. *See Blanton v. IMN Financial Corp.*, 260 B.R. 257, 266 (M.D.N.C. 2001).

Here, these factors weigh in favor of Plaintiff's original choice of forum. Transfer of this action to New York will have no impact on the administration of Old GM's bankruptcy estate because Plaintiff is asserting claims against New GM it expressly assumed under contract.[23] Judicial economy is served if another court will not be required to familiarize itself with this case, as well as California consumer protection laws. There is also no reason to believe that GM would not receive a fair trial in this Court. Further, California has a strong interest in having this case tried here because the Class includes only California residents.

Convenience of the parties also weighs in favor of this Court. Both parties and the percipient witnesses, including Class Members, are located in either

[23] Although the MTD stresses the importance of the "home court presumption," the location of the debtor's bankruptcy is not a legitimate factor to be considered when ruling on this motion because the debtor is not a party to this action and the outcome of this case will have no impact on the debtor's estate.

California or Michigan, where New GM is incorporated. Were this matter to be litigated in New York, the parties would be required to incur significant travel expenses for themselves, their attorneys, and their witnesses. Although this additional expense might be trivial for an entity as large as New GM—which recently received billions of taxpayer dollars—Plaintiff would rather direct his limited resources to the case at hand and avoid unnecessary expenses. Further, Class Members and the Class Vehicles are all located in California. All of the records maintained by New GM dealers concerning vehicle defects and repairs at issue are located in California. It would serve neither the interests of judicial economy nor convenience of the parties to have to transport them to New York. Accordingly, New GM's venue motion must be denied.[24]

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks this Court to deny GM's Motion to dismiss.

Dated: September 28, 2010 **STRATEGIC LEGAL PRACTICES, APC**

By: /s/
Pavam Shahian
Attorneys for Plaintiff

[24] Finally, New GM is contending that federal bankruptcy jurisdiction exists under §1334(b) because this case is "related to cases under Title 11," and for good reason. The Ninth Circuit holds that the test for determining whether a civil proceeding is "related to" bankruptcy is "whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988) (emphasis in original); *In re Dumont*, 383 B.R. 481, 490 (9th Cir. BAP 2007). An action is "related to" bankruptcy if the outcome could alter "the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *In re Fietz*, 852 F.2d at 457. Here, any recovery against New GM will have no impact on Old GM's bankruptcy estate. And any contention that permitting this proceeding to continue against New GM in this Court may affect the bankruptcy estate on the ground that one might seek recovery with respect to claims that New GM expressly assumed is without merit.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

STIPULATION TO MODIFY BRIEFING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT

Hearing Date: October 18, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

Plaintiff Rodolfo Fidel Mendoza ("Plaintiff") and General Motors, LLC ("GM"), through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, Plaintiff served a Class Action Complaint ("complaint") in the matter captioned *Mendoza et al. v. General Motors, LLC* (Case No. CV-10-2683 AHM (VBK)) on GM on or about May 1, 2010;

WHEREAS, the Court entered a June 18, 2010 Order Re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response (Docket No. 12), setting and/or extending the dates for:

1. filing of Plaintiff's First Amended Class Action Complaint, by July 16, 2010;
2. filing of GM's motion to dismiss the complaint, or, in the alternative, transfer this action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1412, by August 16, 2010,
3. filing of Plaintiff's Opposition to GM's motion, by September 7, 2010;
4. filing of GM's Reply in support of its motion, by September 20, 2010; and
5. the hearing on GM's motion, for September 27, 2010 , at 10:00 a.m., Courtroom 14, in the Central District of California, Western Division.

WHEREAS, Plaintiff filed his First Amended Class Action Complaint on July 15, 2010;

WHEREAS, GM filed its Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court (Docket No. 15) ("Motion to Dismiss or Transfer") on August 13, 2010;

WHEREAS, the parties at the request of plaintiff's counsel stipulated to and the Court approved two prior extensions of plaintiff's time to file opposition to the Motion to Dismiss or Transfer;

WHEREAS, plaintiff filed his opposition to the Motion to Dismiss or Transfer on September 27, 2010;

WHEREAS, GM's reply to plaintiff's opposition is presently due next Monday, October 4, 2010 and the hearing is set for October 18, 2010;

WHEREAS, due to the press of other professions and personal commitments GM counsel has requested, and plaintiff's counsel has agreed to stipulate to, a one-week extension of GM's time to file its reply, and no previous extensions of this deadline have been granted;

WHEREAS, the Court, in its Order of August 23, 2010 approving plaintiff's first request for an extension originally gave GM two weeks to prepare its reply,

IT IS HEREBY STIPULATED AND AGREED, by and between plaintiff and defendant GM, through their respective counsel of record, that the Court, subject to the convenience of its calendar, may enter an order as follows:

1. Defendant will file its reply in support of its motion by October 11, 2010; and
2. The hearing the Motion to Dismiss or Transfer may be continued to October 25, 2010, at 10:00 a.m., Courtroom 14, in the Central District of California, Western Division, or another date convenient to the Court's calendar;

DATED: September 29, 2010 ISAACS CLOUSE CROSE & OXFORD LLP

By: *[s]*
Gregory R. Oxford
Attorneys for Defendant
General Motors LLC

DATED: September 29, 2010 THE LAW OFFICE OF ROBERT L. STARR

STATEGIC LEGAL PRACTICES APC

By: *[s]*
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

[PROPOSED] ORDER EXTENDING BRIEFING AND HEARING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT

Hearing Date: October 18, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

The Court has reviewed and considered the parties' September 29, 2010 Stipulation to Extend Briefing and Hearing Schedule for Defendant's Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Defendant will file its reply in support of its motion by October 11, 2010;

2. The hearing on Defendant's motion shall be continued to October 25, 2010, at 10:00 a.m., Courtroom 14, in the Central District of California, Western Division.

DATED: September __, 2010

United States District Judge

GREGORY R. OXFORD (S.B. #62333)
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General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

ORDER EXTENDING BRIEFING AND HEARING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT

Hearing Date: October 18, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

The Court has reviewed and considered the parties' September 29, 2010 Stipulation to Extend Briefing and Hearing Schedule for Defendant's Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court ("Stipulation"). Based on the Stipulation and GOOD CAUSE APPEARING, it is hereby ordered that:

1. Defendant will file its reply in support of its motion by October 11, 2010;

2. The hearing on Defendant's motion shall be continued to October 25, 2010, at 10: 00 a.m., Courtroom 14, in the Central District of California, Western Division.

DATED: September 30, 2010

United States District Judge

GREGORY R. OXFORD (S.B. #62333)
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General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

NEW GM'S REPLY IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [F.R.Civ.P. 12(b)(1)] OR, ALTERNATIVELY, TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT [28 U.S.C. § 1412]

Hearing Date: October 25, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

Defendant General Motors LLC ("New GM") respectfully submits this memorandum in reply to plaintiff's opposition to ("Opposition" or "Opp."), and in further support of, New GM's Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction or, alternatively, for motion for transfer to the Southern District of New York under 28 U.S.C. § 1412 for referral to the Bankruptcy Court that is handling the bankruptcy case of General Motors Corporation n/k/a Motors Liquidation Company ("Old GM") under 28 U.S.C. § 157(b) ("Motion").

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PRELIMINARY STATEMENT

From its very first paragraph, plaintiff's Opposition reads almost like a response to the Rule 12(b)(6) motion that New GM did not file. The point of the Rule 12(b)(1) motion which New GM did file is *not* that this Court should dismiss plaintiff's case because he cannot state a cause of action, but that the issues here presented must instead be submitted to the United States Bankruptcy Court for the Southern District of New York which in a final and binding order (with full res judicata effect) has retained "exclusive jurisdiction" to protect New GM from having to litigate claims which, if proven, would be the responsibility of Old GM.

In July 2009, New GM purchased the assets of Old GM under an Amended and Restated Master Sale and Purchase Agreement ("ARMSPA"), but it did not assume Old GM's liabilities, except for the "Assumed Liabilities" specifically listed in ARMSPA § 2.3(a). Thus, as plaintiff recognizes, *see* Opp., p. 5, the inescapable threshold question in this case is whether the state statutory liabilities he is alleging, if they could be proven, would belong to Old GM or New GM.

The answer to that question requires application and, possibly, interpretation of the terms of the ARMSPA and of the Sale Approval Order in which the Honorable Robert E. Gerber, United States Bankruptcy Judge, (1) approved the ARMSPA under section 363 of the Bankruptcy Code and (2) retained exclusive jurisdiction to implement, enforce and resolve any disputes concerning the ARMSPA and/or the Sale Approval Order.

Accordingly, New GM has moved to dismiss plaintiff's First Amended Complaint *for lack of jurisdiction* or, in the alternative, for transfer to the Southern District of New York and referral to the Bankruptcy Court. Thus, contrary to plaintiff's statement in the first paragraph of his Opposition, New GM is *not* asking this Court "to interpret the provisions [of the ARMSPA] *and dismiss [the] First Amended Complaint … because … Plaintiff's claims are not the 'Assumed Liabilities' of new GM*." Opp., p. 1 (emphasis added). Instead, New GM is asking

this Court affirmatively *not* to interpret these documents except insofar as is necessary to discern that the Bankruptcy Court has exclusive jurisdiction to do so. That is why New GM did not move in this Court for dismissal under Rule 12(b)(6).

Thus, far from "forum shopping" as alleged by plaintiff, New GM is asking this Court to do nothing more than honor the Bankruptcy Court's retention of jurisdiction over an issue – what did New GM buy from Old GM in the section 363 transaction and subject to what liabilities? – which falls squarely within the Bankruptcy Court's "core" jurisdiction under the Bankruptcy Code.

The ARMSPA and Sale Approval Order embody the single most important transaction in Old GM's bankruptcy case. Allowing other courts to interpret these documents and potentially modify the section 363 transaction after-the-fact by imposing liabilities on New GM that it did not agree to assume not only would flout the Bankruptcy Court's retention of exclusive jurisdiction, but also would open the door to end-runs of that jurisdiction that could lead to conflicting adjudications by state and federal courts concerning the assets and liabilities that were transferred to New GM under the ARMSPA.

Such piecemeal rulings would undermine and threaten the integrity of the bankruptcy process by enabling non-bankruptcy courts to give claimants like plaintiff (and thousands of alleged class members) preferential treatment at the expense of a section 363 purchaser (New GM) which bargained specifically concerning the Old GM liabilities that it would and would not agree to assume pursuant to a detailed written sale and purchase agreement defining its continuing obligations. The Bankruptcy Court which approved that agreement is obviously in the best position to determine what types of liabilities Old GM did or did not pass on to New GM.

And, in fact, in an order issued just last week, Judge Gerber held that he had exclusive jurisdiction over issues concerning another aspect of the 363 transaction: Deferred Termination or "Wind-Down" Agreements under which certain GM

dealers agreed, in exchange for monetary and other consideration, to terminate their GM Dealer Sales and Service Agreements no later than October 31, 2010 as an alternative to outright rejection of those executory contracts under section 365 of the Bankruptcy Code. In several respects, that ruling is instructive.

The plaintiff dealership in that case, a California motor vehicle dealer named Rally Auto Group, Inc. ("Rally"), sought reinstatement of four GM Dealer Agreements through binding arbitration under Section 747, Consolidated Appropriations Act 2010, Pub. Law 111-117, 23 Stat. 3034 (2009). The arbitrator concluded that Rally was entitled to reinstatement of only its Buick, Cadillac and GMC franchises. Rally then sued to vacate or modify the award, and thereby avoid its obligation to terminate its Chevrolet Dealer Agreement pursuant to the terms of the Bankruptcy Court approved Wind-Down Agreement. Rally Auto Group, Inc. v. General Motors LLC, United States District Court for the Central District of California, Southern Division, No. SACV 10-01236 DOC (Ex) (the "California Action").

In response, New GM moved in Bankruptcy Court for an order enforcing the Wind-Down Agreement and enjoining Rally from, among other things, continuing to prosecute the California Action. In granting the motion, Judge Gerber had this to say about the importance of Bankruptcy Court jurisdiction over issues arising under the ARMSPA and Sale Approval Order:

> "[T]he bidders of the world that come in to bid for assets in the bankruptcy court must have knowledge that bankruptcy courts will stand by the documents as they were then drafted to give the parties to those agreements the predictability in their relations for which they are binding and upon which they justifiably rely. The Court in [In re Eveleth Mines LLC, 312 B.R. 634, 645 n. 14 (Bankr.D.Minn.2004)] explained: '[a]s applied to a sale free and clear of liens, there are also good policy reasons for making a derivative core-proceeding

> classification…. Active bidding on assets from bankruptcy estates will be promoted if prospective purchasers have the assurance that they may go back to the original forum that authorized the sale, for a construction or clarification of the terms of the sale that it approved. Relegating post-sale disputes to a different forum injects an uncertainty into the sale process, which would dampen interest and hinder the maximization of value. A purchaser that relies on the terms of a bankruptcy court's order, and whose title and rights are given life by that order, should have a forum in the issuing court.'"

Transcript of Hearing, In re Motors Liquidation Co., No. 09-50026 REG, October 4, 2010.[1] This holding is directly on point here, where New GM seeks protection against a claim that asserts liabilities which New GM simply did not agree to assume. As a result of the Bankruptcy Court's final and binding Sale Approval Order which in paragraph 71 retains "exclusive jurisdiction" over such issues, this Court as a matter of res judicata (leave aside normal judicial comity) is simply without power to decide them. *See* Met-L-Wood Corp. v. Getkas, 861 F.2d 1012, 1016 (7th Cir.1988) (bankruptcy court's sale approval order under 11 U.S.C. § 363 is a final order with res judicata effect that can only be challenged on appeal); Boyer v. Gildea, 2005 U.S.Dist.Lexis 41534 at *11-12 (N.D.Ind.2005) ("The important policy of favoring the finality of bankruptcy court orders approving the sales of debtor assets requires that bankruptcy orders be final judgments for *res judicata* purposes").

ARGUMENT

I. NEW GM IS ONLY LIABLE FOR "ASSUMED LIABILTIES"

Plaintiff claims that New GM is liable under three California statutes based upon an alleged "design defect" in his 2005 Chevrolet Equinox – a vehicle that

[1] A copy of the full transcript of the hearing, including Judge Gerber's decision is attached hereto as Exhibit A.

New GM *did not* manufacture or sell. In fact, it is undisputed that New GM did not manufacture or sell *any* of the vehicles owned by members of the proposed class. New GM therefore has no liability to the owners of these vehicles *unless* it specifically agreed to assume such liability in the ARMSPA.

New GM believes that the express terms of the ARMSPA and Sale Approval Order establish that it does not have any such liability. But GM is not asking this Court to make that determination. Instead, New GM only is asking the Court to recognize that to the extent that plaintiff has any colorable claim, it unavoidably depends on application and interpretation of the ARMSPA and thus must be addressed to Judge Gerber who, under paragraph 71 of the Sale Approval Order, retains "exclusive jurisdiction to enforce and implement the terms of Order ***and to protect [New GM] against any of the Retained Liabilities*** [*i.e.*, liabilities that New GM did not assume under the Order] or the assertion of any lien, claim, encumbrance or other interest, of any kind or nature whatsoever, against the Purchased Assets [which New GM purchased from Old GM]") (emphasis added).

New GM's lack of liability and Judge Gerber's jurisdiction to determine what "Assumed Liabilities" it specifically agreed to accept both follow from the very nature of a "sale free and clear of liabilities" under section 363 of the Bankruptcy Code. The obvious goal of such a sale is to obtain monetary value for the benefit of the debtor's estate and creditors by selling valuable assets of the estate *without the attendant liabilities*. *See* Sale Approval Order, ¶ 7 ("Except for the Assumed Liabilities, … the Purchased Assets shall be transferred to [New GM] free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever … including rights or claims based on any successor or transferee liability").

To the extent that liabilities pass to the purchaser, even on a limited basis, they lessen the purchase price and the value to the estate *pro tanto*. It is therefore very important, both to a section 363 purchaser and to the debtor, to identify

specifically what types of liabilities will be assumed by the purchaser and which will remain with the debtor. Here, in the largest industrial bankruptcy case in history, the issue of assumed liabilities was negotiated in great detail and resulted in very detailed definitions of the categories of liabilities which New GM did and did not assume. *See* ARMSPA § 2.3(a) (Assumed Liabilities); *id*., § 2.3(b) (Liabilities retained by Old GM); Sale Approval Order, ¶ 46 ("except for the Assumed Liabilities expressly set forth in the [ARMSPA], … [New GM] …shall not have any liability for any claims that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against [Old GM] … prior to the Closing Date"). The teaching of the Eveleth Mines case, quoted above, is that construction of a 363 sale order to determine what assets and liabilities changed hands is a matter for the Bankruptcy Court.

Simply put, New GM should not be saddled with Old GM liabilities that it did not agree to assume and, indeed, should not be required to litigate claims asserting such liabilities in non-bankruptcy courts when Judge Gerber has express and exclusive power to resolve such claims. *See* Sale Approval Order, ¶ 71.

II. PLAINTIFF'S CLAIMS ARE NOT FOR "ASSUMED LIABILITIES"

As discussed above, New GM is liable to plaintiff only to the extent that this action involves liabilities which New GM expressly agreed to assume under ARMSPA § 2.3(a). Only two categories of the "Assumed Liabilities" defined in that section are even potentially relevant, and in New GM's view neither applies here. But the final arbiter on that issue is, and must be, Judge Gerber.

A. Plaintiff's Claims Are Not for Assumed "Product Liabilities"

Plaintiff first asserts that New GM is liable under California's Consumers Legal Remedies Act ("CLRA"), Civ. Code § 1750 *et seq*., and Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 *et seq*., because it allegedly assumed "product liabilities" under ARMSPA § 2.3(a)(ix). *See*, *e.g.*, Opp., p. 6. But neither plaintiff's CLRA claim nor his UCL claim asserts any claim for "product liability"

either in the general sense (strict liability for *personal injury* or *property damage* based on alleged product defects) or under the more specific definition of "Product Liabilities" contained in ARMSPA § 2.3(a)(ix):

> "all liabilities to third parties for death, personal injury, of other injury to Persons or damage to property caused by motor vehicles … manufactured, sold or delivered by [Old GM] (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…."

Thus, to be an Assumed Liability under section 2.3(a)(ix), a claim must (1) be for death, personal injury or property damage caused by motor vehicles and (2) arise directly from accidents or incidents occurring on or after the Closing Date. Plaintiff's allegations satisfy neither of these requirements.

1. Plaintiff Is Suing for Non-Disclosure, Not Property Damage

The First Amended Complaint does not include any claim for personal injury or "property damage caused by motor vehicles." Instead, it seeks monetary and injunctive relief to remedy alleged economic losses caused by claimed violations of disclosure statutes relating to the condition of vehicles sold prior to the Old GM bankruptcy. *See* FAC, ¶¶ 83, 86, 90-91, 103, 109-10, 111b, 111d. Neither economic loss caused by an alleged design defect nor violation of statutory disclosure or reimbursement obligations is included in the categories of assumed liabilities defined in section 2.3(a), including section 2.3(a)(ix) which provides for New GM to assume liability *only* for personal injury and property damage.

To be sure, plaintiff argues that the FAC "is replete with *allegations* of 'property damage'" (Opp., p. 6), but he is not *suing* for property damage caused by motor vehicles. Instead, he is suing for money damages, restitution and injunctive relief based on alleged violations of the CLRA and UCL. If, as plaintiff argues,

New GM assumed liability for violations of consumer statutes, it certainly is not apparent on the face of section 2.3(a)(ix), and there is certainly nothing elsewhere in the text of the ARMSPA or Sale Approval Order indicating that New GM intended to do so. In fact, the exact opposite is true. ARMSPA § 2.3(b)(xvi) confirms in a seemingly straightforward manner that Old GM retains (and therefore New GM did not assume) "all Liabilities arising out of, related to or in connection with any implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty." That is why it is mandatory that any alleged ambiguity in the contract language be resolved by the Bankruptcy Court, which approved and possesses very detailed knowledge of the ARMSPA and the overall intent of the parties.

Indeed, according to plaintiff, Judge Gerber already has addressed this issue in his opinion which accompanied issuance of the Sale Approval Order:

> "As Judge Gerber of the Bankruptcy Court noted in ruling on the sale of assets that gave rise to New GM and objections thereto, the Assumed Liabilities include '*all* product liability claims arising from accidents or other discrete incidents arising from operation of GM vehicles occurring subsequent to the closing … *regardless of when the product was purchased*.'" Opposition, p. 8 (emphasis by plaintiff).

GM believes that Judge Gerber was using the term "product liability claims" in its normal sense to refer to strict liability for personal injuries or property damage caused by a design or manufacturing defect rather than to violation of consumer disclosure statutes, but if there is any doubt about the scope of the quoted sentence or the extent of the liabilities which New GM agreed to assume, Judge Gerber obviously is best situated to interpret his own words.

2. Plaintiff's Claims Did Not Arise After the Closing Date

Plaintiff argues that New GM is liable on his statutory claims because they are claims for property damage "arising directly from accidents or incidents or

other discrete occurrences that happen on or after the Closing Date." Opp., pp. 6. Because plaintiff first experienced a water leakage problem after the Closing Date, they say, the problem did not "manifest itself" until after that date; therefore, they say, New GM is liable under ARMSPA § 2.3(a)(ix).

This argument falls first, as explained above, because plaintiff's claim is not for property damage at all but for economic loss stemming from alleged violation of consumer disclosure statutes. But even beyond that initial fatal flaw, plaintiff's argument fails because the duty of disclosure of the alleged "known defect" under the cited consumer statutes arose if at all *prior to the Closing Date* ***regardless of when plaintiff or any other specific owner experienced a water leakage problem***. In other words, the alleged liability did not "arise from accidents, incidents or other discrete incidents" either before or after the Closing Date, but arose instead from alleged knowledge of the defect before the Closing Date that assertedly gave rise to a duty of disclosure on the part of Old GM before that date. Although plaintiff alleges that New GM became aware of the alleged defect on or shortly after the Closing Date, it had no contractual relationship with Equinox and Torrent owners at that time, aside from its express warranty obligations assumed under ARMSPA § 2.3(a)(vii)(A), *see* Part II-B *infra*, so there is simply no basis for any claim that it owed these owners any duty of disclosure. Therefore, plaintiff's "manifestation" argument reduces to nothing more than an attempt to impose forbidden successor liability on New GM based on Old GM's alleged failure to disclose a claimed defect before the Closing Date. *See* Sale Approval Order, ¶ 46.

B. <u>Plaintiff's Claims Are Not for Assumed Warranty Liabilities</u>

ARMSPA § 2.3(a)(vii)(A) delineates the *only* warranty liabilities which New GM agreed to assume:

> "all Liabilities arising under express written warranties … that are specifically identified as warranties and delivered in connection

with the sale of new, certified used or pre-owned vehicles … manufactured or sold by [Old GM]…."

Paragraph 56 of the Sale Approval Order amplified the limited nature of the assumed warranty obligations:

> "[New GM] is assuming the obligations of [Old GM] pursuant to and *subject to conditions and limitations contained in* their express written warranties…. [New GM] is not assuming responsibilities 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 sale materials." (Emphasis added.)

These provisions clearly establish that the only warranty liability that New GM assumed was liability under Old GM's standard limited "repair or replace" warranties. Under these warranties, the *exclusive* remedy is free-of-charge repair of defects in materials and workmanship upon presentation of the vehicle to an authorized dealer within the warranty period. *See* Request for Judicial Notice, Exhibit D. All other remedies are specifically excluded.

It comes as no surprise, therefore, that plaintiff admits he is not suing GM for breach of express warranty, *see* Opp., p. 5, despite alleging that GM "refused to cover the problem under warranty, as it was required to do under the [ARMSPA]." *See* FAC, ¶¶ 13-14, 45, 57, 60. Instead of seeking free repairs under the warranty, plaintiff seems to have made the tactical choice to allege that the standard limited warranty *does not* cover water leaks because lack of warranty coverage is an essential predicate for his MVWAP claim that in those circumstances in which GM dealers did provide free repairs for water leaks, they did so in alleged compliance with a MVWAP "adjustment program" which Old GM allegedly created by "enlarging" the warranty. *See* Opp., p. 11.

C. New GM Did Not Assume Any Other Relevant Liabilities

1. CLRA and UCL Claims

Vehicle manufacturers are subject to a variety of legal claims based on their manufacture and distribution of new vehicles to their dealers for sale or lease to retail customers. These include not only strict product liability claims for personal injury or property damage and claims for breach of standard vehicle warranties, all of which New GM specifically agreed to assume, but also other types of claims including breach of implied warranties and warranties-by-description, claims of common law misrepresentation and omission, and claims for violation of state consumer laws such as California's CLRA, UCL and MVWAP statutes. The ARMSPA conspicuously excluded the latter group of claims.

Because New GM did not manufacture plaintiff's Chevrolet Equinox – or *any* Equinoxes or Pontiac Torrents – it is not liable on any of these types of claims *unless* it specifically agreed to assume such liability. Because plaintiff's CLRA, UCL and MVWAP do not fall within any of the Assumed Liability categories set out in ARMSPA § 2.3(a), New GM, very simply, has no liability to plaintiff because it did not manufacture or distribute his vehicle and therefore, unlike Old GM, is not subject to these types of claims.

Bolstering this conclusion, ARMSPA § 2.3(b)(xvi) explicitly excludes from the liabilities assumed by New GM "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 [Old GM]." ARMSPA (emphasis added).[2]

[2] To be sure, plaintiff argues that his claims do not fit within this exclusion because, he claims, he is suing on express rather than implied obligations. But plaintiff's statement that his claims involve "*express* obligations" that "transcend the law of warranty" confirms that these claims regardless of whether they fit within the exclusion do not fit within the section 2.3(a)(vii)(A) definition of assumed warranty liabilities because they *transcend* – i.e., are outside the bounds of – warranty law. Opp., p. 8, n. 6 (quoted emphasis in original).

Further, paragraph 46 of the Sale Approval Order provides that "[e]xcept for the Assumed Liabilities expressly set forth in the [ARMSPA] … [New GM] … shall [not] 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 [Old GM] … prior to the Closing Date…." Claims for non-disclosure of an alleged design defect clearly "relate to the production of vehicles prior to the Closing Date" and therefore fall squarely within the ambit of this prohibitory language. And, if there were any reason for doubt, the next sentence of paragraph 46 clearly puts to rest any conceivable claim that New GM has liability based on Old GM's failure to disclose the alleged defect:

> "***Without limiting the foregoing, [New GM] 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 … and ***products*** … ***liability***, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."

Based on plaintiff's allegations (which New GM does not admit), as of the Closing Date he asserts that he had an unasserted "products liability" claim against Old GM for alleged non-disclosure of the claimed design defect. Under the quoted language, however, New GM clearly has no successor or transferee liability based on Old GM's failure to disclose the alleged defect.

Plaintiff not only has no "products liability" or "warranty" claim, but he is subject to a Bankruptcy Court injunction prohibiting him from making such claims against New GM. Sale Approval Order, ¶ 47 ("Effective upon the Closing …all persons and entities ***are forever prohibited and enjoined from commencing or continuing in any manner any action … against [New GM] …with respect to any (i) claim against [Old GM] other than Assumed Liabilities***) (emphasis added).

To be sure, plaintiff argues that New GM is liable on his statutory claims because it has "continued" Old GM's misconduct. This argument is circular, however, because it assumes incorrectly that New GM has the same obligations and liabilities as Old GM, the manufacturer of plaintiff's vehicle. It does not. Because it did not manufacture Chevrolet Equinoxes or Pontiac Torrents, New GM *does not* have normal manufacturer liabilities. Instead, the only source of potential liability to plaintiff on the part of New GM is the ARMSPA, so any liabilities to plaintiff other than those set forth in section 2.3(a) belong to Old GM.

Further, plaintiff's argument that New GM allegedly learned of the claimed water leak defect when it purchased Old GM's assets in July 2009, and therefore was obliged under the CLRA and UCL to disclose the claimed defect to plaintiff, is missing an essential element. At the time that the section 363 transaction closed on July 10, 2009, New GM had no relationship with plaintiff *except* for its agreement to perform Old GM's obligations under its standard express warranty.

If, as plaintiff apparently believes, Old GM knew of the alleged defect and failed to make required disclosures, plaintiff at the time that the section 363 transaction closed *already had an actionable claim against Old GM that was ripe for adjudication*. But New GM did not have any liability as the vehicle's manufacturer and under the ARMSPA it did not agree to assume Old GM's liability for alleged non-disclosure, which accordingly remains with Old GM. Thus, plaintiff's nondisclosure claim against New GM reduces to a naked attempt to impose successor or transferee liability – a result which paragraph 46 of the Sale Approval Order explicitly forbids. And, again, any arguments to the contrary must be made to the Court which entered that order, the Bankruptcy Court for the Southern District of New York.

2. MVWAP Claims

Virtually the same analysis applies to plaintiff's MVWAP claims. MVWAP provides that *the manufacturer* of a vehicle (here, Old GM) cannot expand or

extend coverage under its standard warranty, except on an *ad hoc* basis, without notifying all vehicle owners of the availability of the expanded coverage and reimbursing owners who already have paid for repairs of the "condition" that is the subject of the alleged "adjustment program." Civ. Code §§ 1795.90(d), 1795.92. The basis for plaintiff's MVWAP claim in this case are two versions of a Technical Service Bulletin issued by Old GM which describes how to diagnose and remedy water leak problems *but which says absolutely nothing about whether repair of these problems is covered under the warranty or, if not, whether the repairs should be provided to customers free-of-charge.*

While New GM believes that these Technical Service Bulletins *did not* create any "adjustment program" within the meaning of Civ. Code § 1795.90(d), the important point here is that the MVWAP violation, if there was one, was complete at the time these bulletins were adopted in October 2008 and January 2009, *before the Old GM bankruptcy filing*. In other words, if there was an obligation under MVWAP to provide statutory notice to Equinox and Torrent owners of a claimed defect which, obviously, "relate[d] to the production of vehicles prior to the Closing Date" (*see* Sale Approval Order, ¶ 46), Old GM had that obligation and had breached it long before New GM negotiated to purchase its assets. Because New GM did not manufacture these vehicles, and did not assume MVWAP liability for them in the ARMSPA,[3] it could only have MVWAP liability as a successor or transferee. But ARMSPA and the Sale Approval Order expressly protect New GM from such liability. *See id.*

Plaintiff also makes a spurious claim that New GM expressly assumed liability under MVWAP because this statute allegedly is "similar" to the National

[3] Plaintiff does not and cannot argue that a violation of MVWAP falls within New GM's assumed warranty liability under section 2.3(a)(vii)(A) since, by definition, providing coverage which *expands* or *enlarges* the limited coverage provided by the standard express warranty is not coverage that "arises out of" that warranty. *See also* Sale Approval Order, ¶ 56 ("[New GM] is assuming the obligations of [Old GM] pursuant to and subject to conditions and limitations contained in their express written warranties….").

Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 30101 *et seq*. (the "Safety Act"). To be sure, ARMSPA § 6.15(a) and the Sale Approval Order (¶ 17) provide that New GM after the Closing Date "shall comply with the *certification, reporting and recall requirements* of the National Traffic and Motor Vehicle Safety Act … and similar Laws … to the extent applicable in respect of vehicles and vehicle parts manufactured and distributed by [Old GM]" (emphasis added).

Consistent with the emphasized language, however, the Safety Act is only a certification, reporting and recall statute, not a consumer disclosure statute. It requires manufacturers to certify compliance with safety standards before marketing vehicles to the public. 49 U.S.C. §§ 30111, 30112, 30115. It directs the National Highway & Traffic Safety Administration to investigate safety issues and, if necessary, order vehicle recall campaigns. 49 U.S.C. §§ 30118-20, 30163.

But the Safety Act *does not* require manufacturers like GM to notify retail customers when it issues a Technical Service Bulletin or to provide repairs *unless there is a recall*. And by quite carefully limiting the obligation in question to "certification, reporting and recall requirements," the drafters of the ARMSPA made it quite clear that New GM was not assuming responsibility for claims like those plaintiff is asserting here.

In marked contrast to the Safety Act, MVWAP is not a safety certification or recall statute; instead, it requires consumer notification and, sometimes, repair reimbursement, if and when a manufacturer creates an "adjustment program" *whether or not there is a recall or, indeed, any safety issue at all*.

Thus, the Safety Act and MVWAP are in no sense "similar Laws" and New GM therefore cannot be held to have assumed MVWAP liabilities under ARMSPA § 6.15(a) or paragraph 17 of the Sale Approval Order. And, once again, if there is even a smidgen of doubt, the issue falls squarely within Judge Gerber's exclusive jurisdiction to determine what liabilities New GM agreed to assume under these provisions.

III. THE BANKRUPTCY COURT HAS "CORE" JURISDICTION

The authorities cited in the moving papers (pp. 11-13), show that the Bankruptcy Court has "core" jurisdiction to enforce, interpret and resolve disputes concerning sales free and clear of liens under section 363 of the Bankruptcy Court. Judge Gerber in his Rally decision bolstered this conclusion with still more citations that directly address this point:

> "… I find that this is a core matter. Under 28 U.S.C., Section 157(a)(2)(n), core matters include, with exceptions not relevant here, orders approving the sale of property. The 363 sale order and my approval of the wind-down agreement documented the outcome of those core proceedings. And a proceeding such as the motion now before me which seeks relief predicated on a 'retained jurisdiction' clause in my order resolving a core matter is a core matter as well. The decision in Eveleth Mines, 312 B.R. at pages 644 to 645 is directly on point…. The Second Circuit has held similarly. It's held that bankruptcy courts are empowered to enforce the sale order that they enter and to protect the rights which were established by the sale order. See Millenium Seacarriers, 419 F.3d at 97; and Petrie Retail, 304 F.3d at 229-30.[4] Petrie Retail is particularly instructive because it also dealt with a dispute between two nondebtors addressing rights that were created by the sale order…."

Transcript of Hearing, October 4, 2010, pp. 46-47.[5]

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[4] Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.), 419 F.3d 93 (2d Cir.2005); Luan Investment S.E. v. Franklin 145 Corp. (In re Petrie Retail), 304 F.3d 223 (2d Cir.2002)

[5] Plaintiff feebly attempts to distinguish Eveleth Mines on the grounds that one of the litigants initially had consented to Bankruptcy Court jurisdiction but then sought to withdraw its consent. Opp., pp. 20-21. But it is the most fundamental principle of federal jurisdiction that the same cannot be created by consent. And the two Second Circuit decisions certainly dispatch any claim that interpretation of a bankruptcy court's "core" order is not itself a core matter.

The two Winn decisions attached as Exhibits to plaintiff's Opposition do not support any contrary conclusion. Each involved purely state law issues between non-diverse parties as to which bankruptcy issues arose only by way of defense. The district court's remand for lack of federal question jurisdiction has no relevance in this case, where the plaintiff is directly asserting against New GM claims on obligations that remain with the bankrupt, Old GM, in direct violation of paragraph 47 of the Sale Approval Order issued by Judge Gerber.

IV. THE ALTERNATIVE TRANSFER MOTION IS MERITORIOUS

If for any reason the Court is not satisfied that it lacks subject matter jurisdiction as a consequence of the Bankruptcy Court's retention of *exclusive* jurisdiction in the Sale Approval Order, New GM respectfully submits that for the reasons stated in the moving papers, the action should be transferred under 28 U.S.C. § 1412 for referral to the Bankruptcy Court under 28 U.S.C. § 157(b), consistent with the Bankruptcy Court's indisputable "core" jurisdiction concerning the section 363 transaction.

CONCLUSION

For all the reasons stated, defendant General Motors LLC respectfully urges that this Court grant its motion to dismiss this action for lack of subject matter jurisdiction or, in the alternative, transfer the action pursuant to 28 U.S.C. § 1412 to the United States District Court for the Southern District of New York for referral to the Bankruptcy Court pursuant to 28 U.S.C. § 157(b).

Dated: October 11, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: *[s] Gregory R. Oxford*
Gregory R. Oxford
Attorneys for Defendant
General Motors LLC

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

- -x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 4, 2010

3:06 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce 363 Sale Order and Approved Deferred Termination (Wind-Down) Agreement

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning -- or afternoon. Have seats, please. All right. GM. Motors Liquidation Company. Rally Motors. Mr. Lederman, do we have some preliminary matters that I had become unaware of?

MR. LEDERMAN: No, Your Honor, we don't. The only matter before you is a matter that you just introduced. So I was just going to introduce the parties and turn over the lectern to them.

THE COURT: All right. Well, I know Mr. Steinberg and Mr. Snyder. Why don't the remainder of you folks introduce yourselves.

MR. DAVIDSON: Scott Davidson from King & Spalding --

THE COURT: All right.

MR. DAVIDSON: -- for New GM.

MR. OXFORD (TELEPHONICALLY): Greg Oxford, Isaac Clouse --

MR. BLATT: Steven Blatt from Bellavia --

THE COURT: Just a minute, please. First, I need the folks in the courtroom to introduce themselves.

MR. OXFORD: Okay, Your Honor.

THE COURT: And then if people are on the phone, I'm going to have to ask that they defer to people in the courtroom unless people in the courtroom hand off to them.

MR. BLATT: Steve --

THE COURT: All right. Just a minute, please, gentlemen.

MR. BLATT: Yes, Your Honor.

THE COURT: All right. With Mr. Snyder?

MR. BLATT: Yes.

MR. SNYDER: Yes, Your Honor. I'm sorry. Go ahead.

MR. BLATT: Steven Blatt, Bellavia Gentile, 200 Old Country Road, Mineola, New York, on behalf of Rally Auto Group.

THE COURT: Right, Mr. Blatt. Okay.

THE COURT: Now, is there a gentleman on the phone who wanted to introduce himself?

MR. OXFORD: Yes, Your Honor. It's Greg Oxford, Isaac Clouse Crose & Oxford also appearing with Mr. Steinberg on behalf of General Motors LLC.

THE COURT: All right, Mr. Oxford. Okay. Gentlemen, make your presentations as you see fit. But I'm going to need you to address the following needs and concerns. But first, let me lay on my frustration with you guys, both sides. I cannot, for the life of me, understand, Mr. Snyder and Mr. Blatt, why you can't follow the requirements of my case management orders and give me a table of cases and table of authorities as those rules require in baby talk. When I'm trying to compare the two submissions and see what you guys said about a particular case or, for that matter, how you

organized your arguments, that is a source of incredible difficulty and frustration for me. And, Mr. Steinberg and Mr. Oxford -- Mr. Oxford, I think you at least have been in this case before. How many times have I said that I don't want to use -- see the word "passum" especially when it refers to the most important case in your whole brief on a lot of these issues? I'm not expecting a response now. You can address it when it's your turn.

Gentlemen -- Mr. Snyder and Mr. Blatt, if you want to make your subject matter jurisdictions, you can, but it doesn't seem to me that this is about subject matter jurisdiction in any way, shape or form. Frankly, I think you missed the boat when you were talking about related-to jurisdiction. It seems to me that this is a poster child for arising-in jurisdiction and the principle that bankruptcy judges have the authority to enforce their own orders. And when an agreement says that the bankruptcy court will have exclusive jurisdiction to deal with a particular matter and then the order implements that, I have some trouble seeing how it can be to the contrary. If you nevertheless want to continue to the contrary, you got to help me with Petrie Retail and Millenium Seacarriers on those points.

Now, I sense that both sides agree that there is no right of judicial review under the Dealer Arbitration Act and that the Federal Arbitration Act applies only to contractual

agreements to arbitrate. So therefore, we're on a little bit of -- or totally implied remedies if and to the extent they exist. Now, Mr. Steinberg, I want to see whether your argument proves too much. And you can help me with that if I posit to you a situation where the arbitrator is taking bribes or he's taking an ex parte communication because my belly would tell me that even if there weren't an expressed right of judicial review in that situation that Rally Motors, if it were on the losing end of that type of situation and, of course, if it came to me, could come and say, Judge, I need relief from that kind of thing. But, of course, Mr. Snyder and Mr. Blatt, that isn't what you're alleging here. In essence, you're alleging that the arbitrator made an error of law. And you haven't shown me any case in which the arbitrator was told that he had to deal with these franchise agreements double or nothing. And it strikes me as a garden variety claim of legal error. So help me if I'm wrong on that.

Now, I don't know how many times I and the other bankruptcy judges in this district have had 363 orders and confirmation orders provide for continuing jurisdiction typically to follow up on the implementation of things that were in the sale order and in the plan or agreements that were provided under either. Counterparties come into the court all the time putting their money on the line to get benefits by dealing with the bankruptcy court. And that's an important

reason, as at least one of the cases that was quoted to me says, why we have provisions of this character. And I need your help in understanding why I should say "Never mind" to provisions of that type. But if there is authority for some kind of implied judicial review that I, in contrast to a district judge exercising diversity jurisdiction, could issue, or even if it were deemed to be 1331 federal question jurisdiction -- though I don't see the provision of the U.S.C. under which the federal right arises. I mean, I see why you could compel GM to arbitrate but New GM didn't quarrel with your right to arbitrate that I need help on that.

So, Mr. Snyder, will it be you or Mr. Blatt?

MR. SNYDER: It'll be me, Your Honor.

THE COURT: Okay.

(Pause)

MR. SNYDER: Your Honor, as I think the analogy for our purposes or the point where we start is the AAA commercial rules. And I focus on those, Your Honor, only because, as the Court pointed out, I don't think anyone disputes that when both parties sat down to the arbitration that the commercial rules apply. Now, GM states that it objected to the use of the commercial rules. But be that as it may, the scheduling order, in particular, paragraph 1, which is annexed to our objection as Exhibit F, specifically states that the commercial rules apply. And one of those rules, Your Honor, is 48(c) which we

relied on extensively in our papers but it states, and I quote -- it's short: "Parties to an arbitration under this rule shall be deemed to have consented. A judgment upon the arbitration award may be entered into any federal, state or court of competent jurisdiction." Now it doesn't say they have to agree. It says that they've deemed to have consented. And so our argument is, Your Honor, that if the AAA commercial rules apply and GM is deemed to have consented then, naturally, there is a -- the arbitration award is final and binding and there has to be a right of judicial review under the terms of 48(c). Now we cited to the Idea Nuova case for the proposition that although that was a contract case, where the contract is silent as to whether the rights of judicial review apply, the Courts will impute 48(c) not because the parties agreed to arbitrate, Your Honor, but because by going forward with the arbitration, because the commercial rules themselves apply, they're deemed to have consented to both the arbitration and the entry of a final judgment. And, Your Honor, that's based solely on facts that are not in dispute.

THE COURT: Mr. Oxford, do you want to mute your phone, please?

MR. OXFORD: I'm not sure I know how to do that. We could --

THE COURT: All right. CourtCall, mute them. Go ahead, Mr. Snyder.

MR. OXFORD: I didn't hear you, Your Honor. I'm sorry.

THE COURT: I'm telling CourtCall to mute you, Mr. Oxford. Go ahead, Mr. Snyder.

MR. SNYDER: Thank you, Your Honor. Now we agree, Your Honor, as GM has pointed out that the Dealer Arbitration Act is silent as to judicial review. But we contend in addition to the AAA commercial rules giving the federal court subject matter jurisdiction that, as Your Honor pointed out, that if a federal question presents itself under 28 U.S.C. 1331 then the California district court can rely on that federal question to possess subject matter jurisdiction. And that federal question is presented here, to wit. Is the removal of a Chevrolet brand the granting of a "covered dealership" as that term is defined under 747(a) and (d)? It's stated specifically, Your Honor, in Rally's statement. Does the removal of a Chevrolet brand constitute a "covered dealership"? So we have a federal statute that Rally is asking a federal court to interpret and we have the Vaden case which I cite to at -- and -- 129 S. Ct. 1262. In that case, the Supreme Court held that a federal court could look through the arbitration, Your Honor, to determine whether the controversy in question arises under the federal law so that the court has federal question jurisdiction. That's all we're asking the federal court to do. Interpret a federal statute on a federal

question.

And in addition, Your Honor, we believe the federal court has jurisdiction for the issue that Your Honor has raised and is the most troubling, at least to me, that there is no right to judicial review. GM doesn't cite to any federal statute, while may be silent or limited, that did not allow for judicial review. Which goes right to the due process argument and the constitutionality of the statute itself.

Your Honor, the arbitrator didn't have to take bribes. Let's just say we end this hearing and regardless of what happens GM says, I'm not reinstating you. I don't care what Judge Gerber says or anyone else says.

THE COURT: Well, isn't that the easier case because wouldn't you, Mr. Snyder, be able to come back to me in about ten minutes and say that New GM isn't complying with the arbitration award? And to the extent that I understood your 48(c) argument, the language is "deemed to have consented to enforcement". And if you say -- let's take what I understand to be the case. You won three-quarters of -- or your client won three-quarters of the arbitration before the arbitrator. And suppose GM stiffs you on those three-quarters where you prevailed -- your client prevailed. I would have thought -- and maybe Mr. Steinberg should be heard on this because if he contends to the contrary, I guess I should know it. But I would have thought that you could come back to me and say make

GM -- New GM comply with the arbitrator's award. But you're not trying to enforce the arbitrator's award. You're trying to attack it. You're trying to attack the one-quarter of it you don't like.

MR. SNYDER: Your Honor, we're trying to say that if there is judicial review of a statute that does not allow for judicial review that the constitutionality of the statute, the due process argument is the district court possesses jurisdiction to that. There's a crucial difference, Your Honor -- and to me, this is the crux of our argument. Putting the core related and Petrie aside for the moment, whether this Court has jurisdiction or not is to me not the issue. The issue is whether the California court has jurisdiction. What GM is saying is this Court has sole and exclusive jurisdiction. That means of the 600 dealers that had their claims arbitrated with GM, if they are unhappy with a portion of the award then all 600 nondebtors with New GM, a nondebtor, that this Court has sole and exclusive jurisdiction to determine under the Federal Arbitration Act what a covered dealership is. And I'm suggesting that the California district court, whether as a federal question or for constitutionality purposes, might also have that jurisdiction because it can't be that as a result of the wind-down agreements, when the Dealer Arbitration Act was passed that the Court was willing to say we're going to pass the Dealer Arbitration Act to give you dealers another bite at

the apple. But you have to go back to the bankruptcy court if you want it enforced. Now maybe this Court does have related-to jurisdiction but it couldn't be, Your Honor, that there is no right of judicial review and Congress' intent was that everybody has to come back here. And that's --

THE COURT: I don't want to interpret you, Mr. Snyder, but it wasn't related-to jurisdiction that I think is in play here. I think it's arising-in jurisdiction, the second of the three prongs under 1334.

MR. SNYDER: Understood, Your Honor. And again, even if this Court has arising-to jurisdiction, that is not what we're arguing. They are arguing -- and remember, Your Honor, the motion seeks to compel us to withdraw a lawsuit in federal court because the district court does not have jurisdiction. And I think for the three reasons I've stated, the plain language of 48(c), the introduction of a federal question and the constitutionality of a law that does not allow for judicial review, gives the California district court jurisdiction. It's not to say that this Court doesn't have jurisdiction but we didn't start in this court. We started in the federal court in California. They filed an answer. They didn't move to dismiss. And then three days later, they filed the motion here. Not by order to show cause because they were so concerned about the California's court jurisdiction but by regular motion. The -- we, in deference to this Court, didn't

go into the California court to seek a stay. We told them that we would come here and explain to this Court why the Court, the California court, has federal court jurisdiction. They don't reply to our arguments about Vaden and the ability of a federal court to go through -- look through an arbitration. The decision is powerful, Your Honor, to the extent it allows you to look through the arbitration and see if a federal question is presented. That's our issue, that federal questions are presented, constitutionality presented. Normally not an issue but in a case where a statute is silent as to the right of judicial review, the implication or the logical extension of their argument is that everybody has to come back here. And it is submitted, Your Honor, that that's not what Congress intended by leaving the statute silent. We believe what they intended is that the arbitration rules will allow the dealer, the aggrieved dealer, to go into a court of competent jurisdiction to get the relief they seek.

And although the judicial estoppel argument has gone up and back, Your Honor, in their complaint, in paragraph 3 in the Santa Monica case, they don't just rely on diversity when they seek to compel Santa Monica to execute the settlement agreement. They rely on 28 U.S.C. 1331 to get the district court's attention. They rely on the Dealer Arbitration Act to get the Court to execute -- to restrain Santa Monica. Then they come here and say this Court has sole and exclusive

jurisdiction with respect to matters in the Dealer Arbitration Act. They didn't come here, Your Honor, when Santa Monica sought to exercise jurisdiction and refused to sign that settlement agreement. They went to the California district court. And so, to argue that sole and exclusive jurisdiction sits here but to rely on federal jurisdiction not just diversity, 28 U.S.C. 1331 jurisdiction in California, to me, rises to the level of judicial estop.

The last argument, Your Honor, which was the first one you raised, is the applicability of Petrie and the ability of the Court to enforce its orders. And there's no doubt that buyers have expectations and they want this Court to enforce them and they have a right to come in here and seek that. But they have -- every provision of the wind-down agreement that they have pointed to, other than the covenant to sue, is not being implicated. We were able to sue, commence an arbitration, because the Dealer Arbitration Act allowed us to. They actually state in their papers that us going into California district court violated the covenant to sue. Well, how can that be? How can that be that the statute allows us to go to Califor -- and commence an arbitration but doesn't allow it to enforce it anywhere?

The wind-down agreement is still the wind-down agreement. The dealer, Rally, and the other 600 dealers still have certain obligations that they need to fulfill by October

31st. But the covenant not to sue is not one of them because the statute that was codified in December 2009 gave the dealer certain rights. And they are limited rights. They're not happy with the outcome. Rally believes that the definition of covered dealer was inappropriately misinterpreted by the arbitrator. There is nothing in the wind-down agreement or the 363 order, Your Honor, that suggests they would have to come back here for that.

Now, it's unfortunate that the statute is silent. But issues of due process and federal question as well as the AAA rules allow Rally to go into court in California to redress those arguments. That's our position. Again, we're not suggesting or it's minimally relevant that this Court has jurisdiction. Our question is does the California court have jurisdiction. GM thought it did under 28 U.S.C. 1331. So do we. And that's the reason we object to them saying this Court has sole and exclusive jurisdiction under the wind-down agreements as if the Dealer Arbitration Act didn't exist.

THE COURT: Well, you hit on something that I'm glad you did, Mr. Snyder, because I want both you and Mr. Steinberg to address it when it's your respective turns. And, of course, it's your turn now. I would have thought that the Dealer Arbitration Act trumps my order and the wind-down agreements to the extent they're inconsistent. But that the duty of any Court is to try to construe them together to achieve harmony

between them so there is the minimal clashing between the two and that where, of course, the later Dealer Arbitration Act speaks to something, it controls over my order but only to that extent. Do you think I'm off base from that?

MR. SNYDER: I do not, Your Honor.

THE COURT: All right. Keep going.

MR. SNYDER: And, Your Honor, I or Rally do not see the ability to confirm a judgment, as that term is defined in 48(c), or if the district court should allow, modify or vacate the judgment under the commercial arbitration rules as being anything other than an extension of the arbitration which was codified in the Dealer Arbitration Act. It isn't a violation of the covenant not to sue under the wind-down agreements because under the wind-down agreements in July 2009, this was not a sparkle in anybody's eye. No one knew what Congress would end up doing six months later. They're looking to prohibit us from doing something that wasn't even contemplated at the time Your Honor entered that order. This came six months later. And so the rules changed partially. I'm not suggesting the wind-down agreements are -- they say aggregated -- none of that. But the covenant to sue was. And they were allowed to commence arbitrations against New GM in order to get rights back, thumbs up or thumbs down.

THE COURT: Do you think it covers all covenants or all suits or can you harmonize them by saying that if you win

in the arbitrations that Congress has now given you, of course you have the right to enforce that if your opponent, which in this case is New GM, is so dumb as to try to welsh on the arbitrator's ruling. But that's really how they -- separate provisions are best read together.

MR. SNYDER: Your Honor, there's a reason why -- you call it dumb, but there's a reason why the fifty states and every federal statute except this one that I've seen has the right of judicial review. It's because if there is no enforcement of a final or binding arbitration then the other side could say, ha, forget it, I'm not doing anything 'cause you have no place to go.

THE COURT: Again, I remain troubled by the distinction between enforcing the award which my tentative, California style subject to your opponent's right to be heard, is that if New GM hadn't complied with the arbitrator's award, I would make it, and to attack the arbitrator's award which invokes separate policy considerations.

MR. SNYDER: Well, Your Honor, I would say that it seems as if the rules which required findings of fact were set up for judicial review. If the arbitrator had simply said, Your Honor, we're ruling against Rally because I know Larry Mayle, the president, and I don't like him, where could we go? If the Court is suggesting if that was the ruling that we could go into this court to overturn or vacate an arbitration for

manifest disregard of fact and law out of an arbitration coming out of the Dealer Arbitration Act, I don't see it. I see it as being a federal question that allows judicial review for manifest disregard of facts and law through a federal court. That's what the Supreme Court said in Vaden, that you can look through the arbitration to see if a federal question exists. GM doesn't even cite to Vaden in their reply brief. But that is uniquely a federal question. Is Chevy a covered brand as that term is defined under 747(a) and (d)? What could be more of a federal question than citing to the statute itself. This is not an abstract referral, Your Honor, where Rally was trying to get around state jurisdiction. This is questioning the words of a federal statute. And Rally would have never thought to come to this court, Your Honor, as a result of an arbitration to enforce or to ask this Court to make findings of fact as to whether Chevy is a covered dealership as that term is defined under 747(a) because although this Court might have jurisdiction, the California court certainly has jurisdiction.

And, Your Honor, that's what we see as the difference. When I speak about losing or diminishing jurisdiction in the sales process, I'm not suggesting that buyers can't come back to get the benefit of their bargain. But this was not the benefit of anybody's bargain because the Dealer Arbitration Act wasn't even in existence at the time. They couldn't have said we want this statute because we want no

judicial review from the dealers. What are you talking about? There's no right to review anyway. There's a covenant to not to sue. The Dealer Arbitration Act hadn't even been introduced yet. So they can't say they didn't get their expectation 'cause there was no expectation. This was six months later. So I don't see this as an enforcement of an order 'cause there was no expectation that they would have that right.

(Pause)

THE COURT: Okay. Mr. Snyder, I'm going to give you a chance to reply but is this a good time to hear from Mr. Steinberg?

MR. SNYDER: Yes, Your Honor. Thank you.

THE COURT: Thank you.

(Pause)

MR. STEINBERG: Good afternoon, Your Honor. I think Your Honor's questions were very incisive and I will try to answer them as best as I can and to try to point out why I think my colleague has not fully answered Your Honor's inquiry. I think Your Honor is correct that the real issue here is there was a wind-down agreement. Your Honor approved the wind-down agreement that was part of the sale process. And then subsequently, Congress acted under the Dealer Arbitration Act. So how do you mesh what you had done versus the later congressional statute?

And I think it's important to distinguish what does

the Dealer Arbitration Act do and what it specifically did not do. And the thing that it did, and I think my colleague has agreed with this, is it provided dealers who either signed the wind-down agreements or had their dealership agreements rejected in either the Chrysler or General Motors cases a new right created by a federal statute to be reinstated to the dealer network of the debtor or the purchaser of the debtor's assets. And in order to avail themselves of that right, they had to file timely notices in accordance with the Dealer Arbitration Act for binding arbitration. And I think my colleague was correct. It was either up or down. Either you're reinstated or you're not reinstated. And the Dealer Arbitration Act told arbitrators they had seven factors, nonexclusive, to take a look at for purposes of making that determination. And there was specific and very, very tight deadlines that were put in for the arbitration. You had to act to ask for arbitration within forty days. You had six months to complete the arbitration. The arbitrator had seven days to make its ruling and that everything had to be done by July 14th because the legislative intent of the statute which was to try to create what Congress thought was a better balance between the rights of dealers and the rights of the manufacturers, the legislative intent was we need to have a streamlined process that would not otherwise get bogged down with discovery or litigation. We both quote -- at least our reply quotes from

the legislative history to the statute which is fairly sparse. But the legislative history refers to the need to have something streamlined and quick and the statute does not provide for judicial review unlike the Federal Arbitration Act in Section 9, 10, 11 and 12. There are specific provisions which talk about what a Court can do or not do in connection with something that is governed by the FAA. This clearly is not governed by the FAA. The FAA governs agreements where the parties had agreed to arbitrate. This was not one of those situations. This was a case where Congress had imposed the obligation or the right for the dealer to seek arbitration under specific circumstances but it wasn't a contractual obligation that the parties had bargained for. So the FAA, which is leadered (sic), the cases relating to the FAA, the judicial review relating to an FAA, which my adversary recites in his papers, they really have no relevance here. And I think Your Honor was right. There is no judicial review. And that was, I think, intentional. And I think my adversary says where is it that you can never get judicial review? You know, Congress passes a statute not -- imposing a new right and then says that's -- we'll have a procedure to implement that statute and that's it. And there's no more judicial review.

THE COURT: Well, pause, Mr. Steinberg, because I'm wondering if that proves too much. Suppose the arbitrator's taking bribes. And suppose the forum is this court and the

dealer's been victimized by the arbitrator taking bribes. You're telling me that I can't look at that?

MR. STEINBERG: I'm not sure if the right remedy would have been to go to the AAA and say that there was an invalid arbitration and seek the remedy there to invalidate the results of the arbitration. But --

THE COURT: So you're going to take that and -- bring it down and give it to the marshals and then you can return to the courtroom.

MR. STEINBERG: But I will say, Your Honor, that the hypothetical that you posed which is that if there was a violation of what Congress had enacted because they had bribed the arbiter of the resolution, it would seem to me that there needs to be some kind of review. And maybe it would be Your Honor who has the review. I'm not sure whether it would be the AAA that would review it. But it would seem to me in a bribe circumstance that that would be the case.

But I think critical for what my adversary has argued which is that he's raised the potential for the constitutionality of the Dealer Arbitration Act because there is no judicial review, I don't know where that argument goes for him because the Dealer Arbitration Act was a right given to the dealers to potentially seek reinstatement. If you declare the statute unconstitutional then they don't have that right. If he's asking you to put in to the statute that which doesn't

exist which is to, in effect, write the judicial review section when Congress didn't write it, I don't think Your Honor has the ability to do that.

And I don't think -- you know, they spend ten pages of their brief saying how we didn't comply with provisions that is the judicial standard under the Federal Arbitration Act. And I would say to Your Honor that that's irrelevant because that's not -- there is no standard of judicial review. And you can't pick something from another statute and say that's what I'm going to use here in order to make it constitutional.

Now, there is situations where Congress has given a right to a party and there is no judicial review. We cited in our papers the Switchmen case which was actually quoted in Thomas. And we specifically highlighted the language which said that "A review by the federal district court of the board's determination is not necessary to preserve or protect that right." Congress, for its reasons on its own, decided upon the protection of the right which it created. And if you look at Thomas itself, they talked about the concept of where Congress has written legislation where it asked an agency to make a decision. And the issue was if the agency did something wrong, can it get judicial review. And there are certain statutes that provide that there is no judicial review. So the Thomas case when it was written referred to Medicare reimbursement and said that an agency's review relating to

Medicare reimbursement is not subject to judicial review. So --

THE COURT: And Switchmen dealt with the Railway Labor Act?

MR. STEINBERG: Yes.

THE COURT: And it was at least Thomas that was the use of your "passum" if I recall.

MR. STEINBERG: Yes. And I apologize for that, Your Honor.

So we have a situation here where there was a legislative reason why things were done on a streamlined basis. There is no language that talks about judicial review and there is no issue I believe relating to constitutionality. But if it is, I don't think it gets them anywhere. And it was nice that they made this a central part of their oral argument when it was relegated to a footnote in their brief which -- without any real challenge other than just a throw-away that they question whether it could be constitutional if there's no judicial review.

Your Honor --

THE COURT: At least it got your attention enough for you to cover it from pages 8 through 10 of your reply.

MR. STEINBERG: Yes, Your Honor, because I did think it was an important issue and that Your Honor would want the benefit of some briefing. But I did not think that that was

the center of the argument.

Similarly, you'll notice how their argument is morphed because their papers said Your Honor didn't have jurisdiction, didn't have core jurisdiction, didn't have related jurisdiction, asked you to defer to the public policy of the Federal Arbitration Act, to defer to an arbitration when they weren't prepared to necessarily defer to arbitration. And now they, today, said well, we really didn't say you didn't say you didn't have jurisdiction. You just don't have exclusive jurisdiction. We think it may be concurrent jurisdiction. So they did move as well on that.

But I think, Your Honor, that the reason why you do have exclusive jurisdiction and the reason why the wind-down agreement is implicating is because there is no judicial review of what the arbitrator did. If there is no judicial review -- I think everybody agrees that the statute doesn't provide for it explicitly. If there isn't then what's left? Because the other thing that was critical as to the interplay between the Dealer Arbitration Act and the wind-down agreement, the other thing that's critical is that the Dealer Arbitration Act didn't abrogate totally the wind-down agreement. I think my colleague, my adversary, has agreed that it didn't totally abrogate it. There are specific provisions that survive. And so, that if you have an arbitration which has been completed because all the arbitrations had to be completed by July 14th,

and that's it then what's left on the areas where there was no reinstatement, the thumbs down for the Chevrolet dealership, you're back to being governed by the wind-down agreement. The wind-down agreement provided that you couldn't sue New General Motors. That still applies. There (sic) was abrogated solely to the extent that the Dealer Arbitration Act allowed for this binding arbitration remedy to be afforded to dealers who availed themselves of the opportunity to seek arbitration within forty days of the enactment of the Act. Otherwise, the wind-down agreement stayed in effect. And the wind-down agreement stayed in effect now for purposes for this entire period of time that the Rally dealership was not entitled to buy New General Motors vehicles because the wind-down provision for that still stayed in effect.

THE COURT: Mr. Steinberg, do you agree that if New GM hadn't complied with the arbitrator's award on the three brands for which the arbitrator ruled in Rally's favor that Rally could have come back here to enforce it with or without the no-sue clause?

MR. STEINBERG: Yes.

THE COURT: All right.

MR. STEINBERG: Yes. I agree with that because there, the provision, I believe, is ancillary to the arbitration decision. They're looking to implement and enforce the arbitration decision. And I think that if it wasn't being

done since the arbitration is over, they do need to have some kind of remedy. And they should be able to come back to this Court. But I do think it's this Court because I do think that part and parcel of the reason why there was exclusive jurisdiction language in the sale order, exclusive jurisdiction in the wind-down agreement that everybody who signed the wind-down agreement signed was that New General Motors had bargained for as part of the sale process -- had bargained for one forum, this Court who had approved the transaction, to handle anything relating to an enforcement or dispute relating to these agreements. And to take it more broadly, to handle anything that related to, in effect, the assignment and the continuation of the dealership network from Old GM to New GM. And I think that that was what New GM had bargained for here. And I think Rally understood that because they not only were passive on the entry of the sale order but in the wind-down agreement they specifically recognized the exclusive jurisdiction. And that didn't change. That didn't change. That's what New GM had bargained for.

The issue, Your Honor, with regard to judicial estoppel I think could be easily dealt with by the fact that in the case where New General Motors went to a court, it was to enforce a settlement agreement. The Dealer Arbitration Act specifically says that if you're going to settle then there is no arbitration and that the arbitrator has nothing to do. So

when parties settle, they take themselves out of the Dealer Arbitration Act totally based on the expressed language of the statute. Then if someone --

THE COURT: Why didn't New GM come to me to enforce that order?

MR. STEINBERG: We could have, for sure, Your Honor.

THE COURT: I'm sorry?

MR. STEINBERG: We could have, for sure, done that.

Your Honor, the issue with regard to Rule 48(c) of the Commercial Arbitration Rules, we did indicate that we weren't fully adopting the Commercial Arbitration Rules. The Commercial Arbitration Rule, Rule 48(c), is for purposes of seeking enforcement of an arbitration award and they are not seeking enforcement of an arbitration award. And the AAA rules itself say that the rules will be applied only to the extent that it's not inconsistent with the Dealer Arbitration Act. And we believe to try to, in effect, implicitly put in a judicial review concept through a rule that says that you can move for enforcement where we had protested it is inconsistent with the Dealer Arbitration Act which didn't provide for judicial review.

Now, the fact that -- I think my adversary pointed out to the fact that October 31 is fast approaching. And under the wind-down agreement, the Chevrolet dealership will be terminated. And the new dealership that New GM had promised to

-- an entity that used to be a Saturn dealership that operated in the area is going to be given. And there are rights that people have because of that unless something happens in this court or another court. But there is this ticking deadline that is there. And they never -- they filed a motion -- a complaint in August. They themselves have never moved for an injunction or for a stay or to try to continue the October 31 deadline. And I don't think that they can. I think that they had agreed that it would get terminated. I think even the Dealer Arbitration Act specifically wanted finality to these issues and to have finality because it's not only New GM's rights that are being implicated but we've had a dealer who's effectively been on hold since December of 2009 waiting to go in on November 1st. And their rights will be implicated as well.

I think that, Your Honor, that with regard to the interplay between the wind-down agreement and the Dealer Arbitration Act -- the two most critical things is that there is no judicial review that's specified in the statute. And because there's no judicial review, you're left with a wind-down agreement that had not been, in effect, modified at all except for the overlay of allowing for binding arbitration on a right given by Congress. And therefore, the commencement of the lawsuit after the award had been given by the arbitrator is a violation of the wind-down agreement and the provisions that

say that you should not sue and you should not interfere.

I will note, because it hasn't been said, that the arbitrator gave his award in June and New General Motors gave a letter of intent for the other four dealerships that the arbitrator said had to be reinstated. And Rally has been reinstated for those other four dealerships. And this --

THE COURT: Oh. So when I said it won three-quarters, actually it won four-fifths? Or with respect to four of the five franchises that it once owned?

MR. STEINBERG: That's correct. So they are operating right now. And they got their letter of intent which was supposed to be given by New General Motors, I think, with ten days of the arbitration award. It was only after that they were well down the road to getting the four in place that they decided to sue for the fifth. And, Your Honor, our brief tries to strip away the layers. And to some extent when you orally argue, you try to figure out how much of all the arguments you have to make. But this was even governed by the Federal Arbitration Act. I'm not even sure whether -- what they're arguing about would be subject to any kind of judicial review anyway. We do set forth in our brief the arguments that we think show that there was -- that the arbitration award was consistent with what should have been done because there was not one franchise agreement but there were five franchises agreement. And it's been dealt with because they've taken four

of the five and we still have one that's outstanding. And we point to the language of the sales agreement which talk about "General Motors separately on behalf of its division identified" and talk about the "separate" nature of each of these agreements. The wind-down agreements uses the plural, doesn't use the singular for purposes of talking about these agreements. And not to be overly cute about the argument, but if they were right that this was one agreement and not five agreements and the arbitrator found a taint with regard to one portion of an integrated agreement then the result would be the same as if it was an executory contract under the Bankruptcy Code with five lease schedules as part of one integrated agreement where the debtor couldn't perform all five. It's an all-up or nothing. And if that's the case, there would not have been a reinstatement for all five instead of one. That's the natural outflow of what their argument is which is that if you've got a taint on an integrated agreement which is nonsoluble then the whole agreement falls not that the whole agreement becomes good. And so, what you have here is someone who got the benefits of four dealerships. Then after they got the four dealerships on the reinstatement decided to sue and is now making an argument which is I want my cake, I want to eat it, too, in the context of a statute that doesn't provide for this type of relief.

Your Honor, if you'd just bear with me just one

second, I just want to check my notes to see if I --

THE COURT: Sure.

MR. STEINBERG: -- have answered your questions.

(Pause)

MR. STEINBERG: I think, Your Honor, when you said -- you asked my adversary the question did the Dealer Arbitration Act trump the wind-down agreement for all purposes and he answered no that it was incumbent on you to try to make the two consistent and coherent that he was essentially making the argument that I'm asking Your Honor to, as well, which is that the wind-down agreement had vitality and it was modified for purposes of the covenant not to sue solely for the purposes of doing the binding arbitration procedure consistent with the statute that Congress had subsequently passed. Thank you.

THE COURT: Okay. Thank you. Mr. Snyder, reply?

MR. SNYDER: Your Honor, to first argue what is a covered dealership, what is a not covered dealership to use executory contract analyses versus using franchise law analyses, using California law versus Title 11 law, that's another reason why the California court has jurisdiction because, again, what Mr. Steinberg is doing is saying well, look, Judge, you have jurisdiction. You can apply bankruptcy law between two nondebtor parties as to what means a covered dealership under the Federal Arbitration Act. And any of the 600 dealers who applied for arbitration under GM could do that

as well. And it seems to me that if Congress meant to give dealers and the AAA jurisdiction over these acts then by a natural extension, he meant them to be final and binding. Counsel for New GM sort of takes the car and then he hits a brake. He says the covenant not to sue was abrogated by the Dealer Arbitration Act but it stops there, that there is no right after the arbitration. And that is not true and also doesn't address the question of federal question jurisdiction that the federal court can possess jurisdiction over.

And he raised the Thomas case, Your Honor, but the statute involved in the Thomas case is the Federal Insecticide Fungicide and Rodenticide Act. In that statute, Your Honor, and I cite to Section 136a(c)(1)(F)(iii) of Title 7: "The FIFRA arbitration scheme allows judicial review of 'the findings and determinations of the arbitrator' only in the instance of fraud, misrepresentation or other misconduct by one of the parties to the arbitration or the arbitrator. This provision protects against arbitrators who abuse or exceed the powers or willfully misconstrue their mandate under the governing law." So Title 7 allowed for judicial review or allowed for a response to Your Honor's question as to what happens when an arbitrator acts inappropriately. Those last quotes, by the way, Your Honor, were the Thompson v. Union Carbide, 473 U.S. at 592.

Here there's nothing. There's no ability for Rally

or any of the 600 dealers to get redress as a direct result of the arbitrator's conduct no matter what it is. And so what they're saying is everybody, come back here. And we just don't believe that's appropriate under the case law. It's not appropriate under Union Carbide. It's not appropriate under Vaden. And it's not appropriate, we would suggest, under the Second Circuit law.

Your Honor, the statute is less than a year old. Of course, the cases we need to use are cases by analogy which are the FAA statutes. So under the FAA -- I'm sorry -- line of cases, there are agreements. Agreed. But that doesn't mean the arguments aren't consistent because the AAA rules assume that if you're a party to the arbitration you've agreed to consent to the outcome. In the Second Circuit case, in the Idea Nuova case, the statute is silent just like the statute -- I'm sorry -- the agreement is silent just like the statute here is silent. AAA rules apply and we're not saying anything else. And the Second Circuit said if the AAA rules apply then whatever the arbitrator says is final and binding and the unhappy party can then go to the district court and try to confirm that arbitration. Makes sense. That's all we're seeking to do here. The statute is silent. To suggest that we have no right of judicial review of an arbitration belies the fact that every stage plus Title 9 allow for confirmation, vacature, review of arbitrations.

Now, Mr. Steinberg is right. The statute 48(c) only speaks to judgment. And maybe the California district court'll say you can only seek to confirm the judgment. You can't seek to vacate it. You can't seek to modify it. And interprets Rule 48(c) that way as counsel did. But why can't Rally have the chance to allow California law to do that?

Your Honor, this is important. I'd like to go through the wind-down agreement and the jurisdiction sections because they are not inconsistent with the relief we're seeking here. This is from GM's own motion. "The Court retains exclusive jurisdiction to enforce and implement the terms of this order, the MSPA," which is the wind-down agreements, "and each of the agreements executed in connection therewith, including the deferred termination agreement in all respects including, but not limited to, retaining jurisdiction to resolve any disputes with respect to or concerning the deferred termination agreements."

There's no dispute regarding the deferred termination agreements at all. There's a dispute as to whether Chevy is a covered dealership under the Dealer Arbitration Act. We take no position as to whether this Court -- the sale order speaks for itself. Section 13 of the wind-down agreement. "Continuing jurisdiction. By executing this agreement, Dealer hereby consents and agrees that the bankruptcy court shall retain full complete and exclusive jurisdiction to interpret,

enforce and adjudicate disputes concerning the terms of this agreement and any matters related therein and survives termination."

Absolutely. There's an October 31st deadline. The wind-down agreement sets that out. We're bound to the extent we're bound under the wind-down agreement. We've asked GM to extend the October 31st date because of the late hour. They've refused. So now we have to deal with the October 31st deadline or get an extension by a court of competent jurisdiction.

But we're not addressing any of those provisions. Our -- we are seeking jurisdiction based on the Dealer Arbitration Act and not on the sale order and not on the wind-down agreements. This Court still has jurisdiction over those.

Your Honor, the argument about timing -- no good deed goes unpunished. They answered on September 7th and came into this court on September 10th. And then when we tried to get a hearing date as quickly as possible, we agreed we wouldn't go to the court in California to seek a stay if we could get a hearing date on October 4th. And we've abided by our agreement and we're anxiously awaiting whatever the Court's determination is going to be. But we deferred to this Court first because that's where New GM went. And nobody delayed here. As soon as the motion was filed, we sought a quick hearing and we got one thanks to chambers and Your Honor's courtesy. But -- I believe I'm finished.

THE COURT: All right. Very well. All right. We're going to take a recess. I don't know how long it's going to take me. But you needn't be here before 4:30. And I'll come out with a ruling as soon thereafter as I can. We're in recess.

(Recess from 4:04 p.m. until 5:30 p.m.)

THE COURT: Have seats, please. I apologize for keeping you all waiting. In these jointly administered cases under Chapter 11 of the Code, General Motors LLC, which I'll normally refer to as New GM, moves for an order enjoining Rally Dealership from interfering with New GM's ability to, as it was put, to reform its dealership platform pursuant to a previous order I entered, from vacating or modifying an arbitration decision and from pursuing that effort in California district court.

Rally was a GM dealership that was being closed pursuant to an agreement that was acquired by New GM from Old GM. The Dealer Arbitration Act, which was subsequently signed into law, provided an opportunity for dealers such as Rally to become reinstated as New GM dealers, if they were successful in a binding arbitration proceeding, with New GM.

Rally won its arbitration proceeding with respect to three of its brands but not its Chevrolet brand. Rally is attempting to have this arbitration award modified or vacated in a federal district court in California. New GM argues that

there is no right to modify the arbitration award and, additionally, that my Court is the only forum that can hear this issue. In addition, New GM argues that Rally has been interfering with New GM's establishment of an alternate Chevy dealership in violation of its agreement with New GM.

While I understand the difficulties faced by dealers such as Rally as a consequence of the events of last year, the motion must be granted. The following are my findings of fact and conclusions of law in connection with this determination.

As facts, I find that on July 5th, 2009, I entered the 363 sale order. That sale order authorized and approved a master purchase agreement dated as June 26, 2009, often referred by the parties as the MPA, between Old GM and an entity that later became New GM. Pursuant to the MPA and the 363 sale order, on July 10, 2009, New GM purchased substantially all of Old GM's assets free and clear of Old GM's liabilities except as expressly assumed by New GM under the MPA.

As part of the transactions that were approved under the 363 sale order, Old GM entered into and assigned to New GM certain deferred termination agreements, which we refer to as wind-down agreements, which had originally been entered into between Old GM and certain of its authorized dealers. These agreements had been offered to dealers as an alternative to outright rejection of their dealer sales and service

agreements, which we sometimes refer to as dealer agreements under the rights afforded to debtors to reject executory contracts under 365 of the Code. The wind-down agreements provided, among other things, that in exchange for certain payments and other consideration, the affected dealers' dealer agreements would terminate no later than October 31, 2010.

In December 2009, Congress enacted into law a new statute called the Dealer Arbitration Act which gave wind-down dealers such as Rally the opportunity to seek reinstatement to the GM dealer network through a binding arbitration process. Rally timely filed a request for arbitration and an arbitration was held in May before an arbitration -- arbitrator in California. On June 8, 2010, the arbitrator issued an award directing New GM to reinstate Rally's Buick, Cadillac and GMC dealer agreements but ruling that Rally's Chevrolet dealer agreement should not be reinstated. New GM is now currently attempting to establish another Chevrolet dealership in the Palmdale, California area where Rally is located. During this process, the owner of Rally has continued to lobby New GM to reinstate his Chevy dealership. After various proceedings, New GM determined to relocate the Chevy dealership to Lancaster, California which triggered an action by Palmdale against the city of Lancaster in the Superior Court of California. Palmdale claims that the terms of an agreement between Lancaster and the new Chevy dealership violated a state law

that prevent cities from engaging in bidding wars to lure auto dealers and other large sales techs generating businesses to relocate them from one city to another. The owner of Rally, one Mr. Mayle, provided an affidavit on behalf of Palmdale in that action. New GM argues that Rally, through its agent, Mr. Mayle, is providing assistance in litigation against New GM and is interfering with the establishment of a new dealership in violation of the wind-down agreement.

Rally argues that the arbitrator was bound by the Dealer Arbitration Act to either reject or accept the entire dealer contract and that the arbitrator exceeded his authority by not reinstating the Chevy brand as well. Thus, on August 13, 2010, Rally filed suit in California district court seeking to vacate or modify the arbitration award and to prevent termination of his Chevy dealer agreement though presumably wishing to maintain intact the other aspects of the arbitrator's award which maintained his dealerships for the other three brands, Cadillac, Buick and GMC.

Rally alleges, in substance, that the arbitrator's award in not giving him a complete victory was erroneous as a matter of law in its failure to accept its position that all of the separate brands had to be considered together in the species of double or nothing. He has not alleged that the arbitration award was the result of bribery, fraud, corruption, manifest disregard of settled law or any other ground that

would be a basis for vacating an arbitration award if the Federal Arbitration Act applied.

I'll now turn to my conclusions of law. Turning first to jurisdiction and within the jurisdiction umbrella, first, to subject matter jurisdiction. First, it's plain that the district courts and bankruptcy courts in this district have subject matter jurisdiction over this controversy. The applicable subject matter jurisdiction statute is 28 U.S.C., Section 1334, the section of the judicial code that follows the judicial code sections relating to federal question, diversity and admiralty jurisdiction. 1334 deals with subject matter jurisdiction with respect to bankruptcy cases and proceedings. That section provides, in relevant part, subsection (b), with exceptions not relevant here, "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11".

Rally addresses the issue of "related-to" jurisdiction under 1334 but that isn't the relevant subject matter jurisdiction issue. Rather it's the "arising in" prong of 1334 where New GM relies on an order I entered last year in this case under which this Court retained exclusive jurisdiction in paragraph 71(f) to "resolve any disputes with respect to or concerning the deferred termination agreements". The deferred termination agreements, which as I noted are also

referred to as the wind-down agreements, included provisions by which dealers and New GM contractually agreed that this Court retained full and exclusive jurisdiction to enforce them as well as to specifically preclude Rally and other wind-down dealers from filing suit against New GM and taking any action to interfere with New GM's establishment of additional dealerships. I'll note parenthetically that there was nothing in the Dealer Arbitration Act to modify the subject matter jurisdiction of the federal courts nor to modify any of my earlier orders other than to provide what amounted to a defense to enforcement of the deferred termination agreements if and to the extent that a dealer prevailed in the arbitration process for which Congress provided.

Rally did prevail in the arbitration process with respect to three of its franchises and, presumably, would like to avail itself and enforce that part of the arbitration award. But it wishes to upset the arbitration result as to which it didn't prevail and used the hoped-for alternative result, that is, a reinstatement of its Chevy franchise, as a defense to its duties under the deferred termination agreement which duties otherwise obligated it to give up its Chevy dealership, that being a classic "dispute with respect to or concerning the deferred termination agreements".

Now, Rally may have come to an agreement by the end of oral argument. But in any event, I so rule that this Court

does have subject matter jurisdiction over this controversy.

Similarly, I find that this is a core matter. Under 28 U.S.C., Section 157(a)(2)(N), core matters include, with exceptions not relevant here, orders approving the sale of property. The 363 sale order and my approval of the wind-down agreement documented the outcome of those core proceedings. And a proceeding such as the motion now before me which seeks relief predicated on a "retained jurisdiction" clause in my order resolving a core matter is a core matter as well. The decision in Eveleth Mines, 312 B.R. at pages 644 to 645, is directly on point. In that case, the Court noted the motion that barred directly and necessarily comes out of a core proceeding in this case, the debtors' motion for authority to conduct a sale of assets of the estate free and clear of liens. Court proceedings under 28 U.S.C., Section 157(b) fall under the "arising under" or "arising in" jurisdiction of 28 U.S.C. Section 1334(b). Then the enforcement of orders resulting from core proceedings are themselves considered core proceedings.

The Second Circuit has held similarly. It's held that bankruptcy courts are empowered to enforce the sale orders that they enter and to protect the rights which were established by the sale order. See Millenium Seacarriers, 419 F.3d at 97; and Petrie Retail, 304 F.3d at 229-230. Petrie Retail is particularly instructive because it also dealt with a dispute between two nondebtors addressing rights that were

created by the sale order. Though Petrie Retail was not unanimous, it's no less binding on the lower courts for that reason.

Now there can be no dispute what the sale order actually said. Nor can there be any dispute as to the wind-down agreement said. Section 13 of the wind-down agreement had that continuing jurisdiction clause providing that the dealer hereby consented to and agreed that the bankruptcy court would retain full complete and exclusive jurisdiction to interpret, enforce and adjudicate disputes concerning the terms of this agreement and any other matter related thereto.

Here and to the extent Rally was successful in the arbitration, of course that would be a defense to win any effort to make it terminate its agreement. And to the extent that it wishes to either enforce the agreement as it has the right to do with the three franchises for which it prevailed or to defeat the agreement with respect to the one agreement where it lost, in any event they concern the terms of the agreement and, in particular, any other matter related thereto. I don't think that's subject to serious dispute.

Finally, I've considered and ultimately rejected Rally's suggestion that I exercise discretionary abstention on that. Plainly, there is a right to invoke discretionary invention under 1334(c)(1) of the judicial code. That's 28 U.S.C. Section 1334(c)(1) which provides that nothing in this

section prevents a district court in the interest of justice or in the interest of comity with state courts or respect for state law from abstaining or hearing a particular proceeding arising under Title 11 or arising in or related to a case until Title 11. And while it speaks principally of state courts and state law, I accept for the purposes of this analysis that we, bankruptcy courts have the power to abstain in favor of other federal courts when the circumstances so warrant. But I don't believe that the factors here so warrant. Standards that have been articulated for the exercise of discretionary abstention include of the efficient administration of the bankruptcy estate, comity, the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, the existence of the right a trial and prejudice to the involuntarily removed party. Some of these, obviously, come in removal cases.

Here, I think the factor that is most important is the effect of the effect deficient administration of the bankruptcy estate. This was a procedure that needed to be resolved quickly as evidenced by the very tight time frames that Congress imposed. As important or more so, the bidders of the world that come in to bid for assets in the bankruptcy court must have knowledge that bankruptcy courts will stand by the documents as they were then drafted to give the parties to those agreements the predictability in their relations for which they are binding and upon which they justifiably rely.

The Court in Eveleth Mines explained "as applied to a sale free and clear of liens, there are also good policy reasons for making a derivative core proceeding classification. Active bidding on assets from bankruptcy estates will be promoted if prospective purchasers have the assurance that they may go back to the originally forum that authorized the sale for a construction or clarification of the terms of the sale that it approved. Relegating post-sale disputes to a different forum injects an uncertainty into the sale process which would dampen interest and hinder the maximization of value. A purchaser that relies on the terms of a bankruptcy court's order and whose title and rights are given life by that order should have a forum in the issuing court." That is very strong guidance that suggests that a Court, like me, should not abstain in favor of another jurisdiction.

Similarly, comity is a factor that I would take into account if there were, as contrasted to here, strong state law concerns. But here, of course, there are not. I, no less than a district court, either in New York or California, can determine that which is just in determining whether or not to enforce or, as more relevant here, to undercut an arbitration award.

The degree of relatedness or remotedness of the proceeding to the main bankruptcy court is subject to a double entendre. On the one hand, this is not going to affect the

assets and order of its liquidation in court. But the factors articulated in Eveleth Mines likewise cause Courts here to be slow to abstain because giving purchasers of assets the comfort that their needs and concerns are going to be addressed is pretty important.

I consider the existence of the right to a jury trial inapplicable because I assume that this would be decided without a jury trial in either events and I also consider prejudice to the involuntary removed party under the facts of this case.

So for all of these reasons, I decline to exercise discretionary abstention.

Now turning to what I should do with this controversy before me. Both sides now seem to agree that the Federal Arbitration Act doesn't apply because it implements contractual agreements to arbitrate. And here, the right to compel arbitration comes not from a contract but from the Dealer Arbitration Act itself. And it also now appears to be undisputed that the Dealer Arbitration Act doesn't provide for judicial review of arbitration awards issued after the mechanisms for which the Dealer Arbitration Act provides.

Nor do I think that I can or should find an applied right to judicial review under that statute. First, as you know from reading many earlier decisions that I've issued, I start with textural analysis where I note the significant

absence of such a provision when federal statutes routinely provide for rights to federal -- to judicial review when that is the congressional intent. If I were to imply such a provision here that would be a species of judicial legislation. Second, assuming without deciding that I could appropriately look at legislative history on a matter where the statute is not in any way ambiguous, judicially in grafting rights under that statute would be particularly inappropriate when they'd be inconsistent with the congressional desire to establish this mechanism to avoid the excessive costs and delays of litigation and to impose tight deadlines to get the arbitration process completed.

Nor can I accept Rally's argument that New GM conceded a right to judicial review by reason of its willingness to proceed under the AAA's commercial arbitration rules. In responding to Rally's arbitration demand, New GM expressly stated that it did not waive any objections it might have to the arbitration or to any of the AAA's commercial arbitration rules including, in particular, where such rules would be inconsistent with the provisions or purposes of the Dealer Arbitration Act. For that same reason, I can't find a waiver on the part of New GM of its rights based on a failure to protest again after its initial reservation of rights was put on the record.

Then even if New GM had agreed to AAA arbitration

rules, the arbitration rules called for a mechanism to enforce an award not to attack it. Those rules provided that parties to an arbitration under these rules shall be deemed to have consented the judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof. See Rule 48(c) of the AAA Commercial Rules quoted at paragraph 29 of the Rally brief.

But that language conveys a right to enforce the arbitration award not to attack it. For example, if New GM had failed notwithstanding the arbitration award that Rally doesn't complain about to let Rally keep the three franchises the arbitrator said Rally could keep, Rally could have, at least arguably if not plainly in my view, come back to me and say make New GM do what the arbitrator said it should do. But this is the exact opposite of what we have here and one that's not authorized by the federal statute.

As I indicated in oral argument, and I think both sides agreed, the reasonable course for a judge in my position would be to construe the Court's earlier order and the subsequently enacted federal legislation to achieve as much harmony as possible and to honor the congressional intent to the extent that the federal legislation trumped my earlier order. But it would also be appropriate in my view to honor the congressional intent only to the extent that the federal legislation trumped my earlier order. Congress did say, of

course, with respect to providing for a defense to enforcement of the wind-down agreements with respect to any areas where the arbitrator ruled in the dealer's favor. And I think that if New GM had failed to honor the arbitrator's award, as I indicated a moment ago, I'd almost certainly enforce it. But that is the way by which we'd maintain harmony between my earlier order and the new Dealer Arbitration Act providing for the rights of dealers to invoke the arbitration mechanism in the fashion for which Congress provided. It doesn't provide for a blank check from me to rewrite the Dealer Arbitration Act.

Nor do I think that Rally can get around what is, in essence, an effort to achieve a quasi-appellate review of the arbitration award by saying that it's asking the California district court to make a federal question type determination under the Dealer Arbitration Act. That might be the case if Congress hadn't established the arbitration mechanism and if it had conferred on the district court's jurisdiction to decide issues as to what is or is not a dealership franchise. But the whole point of the statutory scheme was that New GM and dealers would proceed by arbitration. And while, if New GM had refused to arbitrate in the first place, I think that at least I would have had jurisdiction to order New GM to do so. But now that each of New GM and Rally have engaged in the arbitration process, presumably without any Court forcing either to do so,

we can't make the underlying arbitration award evaporate. We can only consider the circumstances, if any, under which the arbitration award is subject to judicial review. And I've already noted, of course, that the statute doesn't provide for such review.

Now, in that connection, I do not believe that under the allegations we have here, this construction raises constitutional issues. I assume without deciding that procedural due process requires a quasi-judicial determination, like an arbitration, to be conducted by a decider who isn't taking bribes or conspiring with one or another of the parties or, though it's more debatable, who ignored facts or binding authority on point. If there were such a contention, I'd at least have to consider whether I'd address it. And I think it's better to construe the Dealer Arbitration Act in such a fashion as to avoid any constitutional issues that would otherwise be relevant.

But I have no allegations of bribes, conspiracy, fraud or even manifest disregard of existing law in the matter before me. Though, if there were such allegations, I think I'd have to seriously consider whether there might be some implied right to remedy such a wrong or that in exercising my exclusive to jurisdiction to enforce or, impliedly, deny enforcement of the deferred termination agreements, I should take such facts into account. But once more, I emphasize that I have no such

allegations here.

In the absence of issues of that character, I think that Thomas and, particularly, Switchmen, the two decisions by the Supreme Court, apply to establish a rule that where an arbitrator was given the power to resolve controversies under a statute, that is, the Dealer Arbitration Act, where dealers and New GM were given rights under that statute, reviewed by the federal district courts or, of course, bankruptcy courts that are arms of the district court and have the power to issue final orders on core matters, of the arbitrator's determination is not necessary to protect those rights. I think I should restate it because I put too many parentheticals in there. Where dealers and New GM were given rights under the statute reviewed by the federal district courts of the arbitrator's determination is not necessary to protect those rights. And, of course, that's a paraphrase of Thomas, 473 U.S. at 588 quoting Switchmen where I'm analytically substituting the Dealer Arbitration Act for the Railroad Labor Act and where I'm substituting arbitrator's determination for board's determination.

So I don't believe that judicial review is necessary except in those cases not presented here, and here only arguably, where there are allegations of fraud, corruption or manifest disregard of an existing decision. And for reasons I described above, I think the exclusive jurisdiction provisions

of the sale order must stick.

First, of course, they're res judicata so they remain binding in the absence of an appellate ruling changing them for a legislative pronouncement that does so. Second, I assume without deciding that Congress could, if it wished, to have taken my exclusive jurisdiction away just as Congress can take away jurisdiction from the lower federal courts on other matters. But Congress didn't do that. If we temporarily put aside issues as to the right to judicial review and decisions as to the merits, I assume, without deciding, that a California district court could under its diversity jurisdiction have subject matter jurisdiction over a controversy like this one. But if it did, it would be foreclosed from exercising its subject matter jurisdiction by reason of the final exclusive jurisdiction order that I entered back in July of 2009. This is no different analytically than the effect that an exclusive jurisdiction order would have over a state court proceeding. Most state courts don't need an expressed grant of subject matter jurisdiction to hear controversies before them. They normally have subject matter jurisdiction over whatever comes through their doors. But that doesn't mean that they can hear controversies when a court order or other federal law, like some federal antitrust laws or securities laws, give a federal court exclusive jurisdiction. Some federal statutes and the order that I entered into are limits on jurisdiction that might

otherwise exist.

Then Rally makes a judicial estoppel argument noting that in a proceeding against another dealer, New GM brought an action in federal court in California invoking diversity and federal question jurisdiction, the latter under the Dealer Arbitration Act, seeking to require that dealer to comply with a settlement agreement and to drop its efforts to proceed under the Dealer Arbitration Act. Frankly, I'm not impressed with the wisdom of that approach and, for the life of me, can't understand why New GM sought relief that way instead of coming to me. But I don't think its effort in that regard rises to a level of a judicial estoppel.

Rally depends on three statements to establish its claim of judicial estoppel. They are that the district court would have jurisdiction under 28 U.S.C. 1332; that the district court would have federal question jurisdiction under 28 U.S.C. 1331 because the controversy there allegedly arose under the Dealer Arbitration Act; and that arbitrators would only be empowered to decide whether or not the specific dealership should be added back to the GM dealer network and that "all other issues that arise under the Act must be addressed by a Court of competent jurisdiction".

I don't think that any of these are particularly to the point. I've noted before that I assume that diversity jurisdiction provides subject matter jurisdiction to the

California court here. But I've also ruled that that can't trump the bankruptcy court's exclusive jurisdiction provision. And while I disagree that there and here would be federal question jurisdiction under the Dealer Arbitration Act for the particular claim there and here asserted, even if there were such federal question jurisdiction, once more, it wouldn't trump the bankruptcy court's exclusive jurisdiction provision. And I don't think there's anything particularly inconsistent between New GM's third point in that Santa Monica action and the points it's making here given the difference between the facts in each of those cases and the context in which New GM made its observations. There, an attempt to enforce a settlement agreement under which the namees (ph.) agreed to dismiss their arbitration and New GM was saying that arbitration wasn't appropriate at all rather than dealing with the consequences of a completed arbitration in which there was an arbitration award.

But even if there were, I'd see other problems in invoking judicial estoppel as well. As Rally notes, at page 23 in its brief, citing the Second Circuit's decision in Uneeda Doll Company, "judicial estoppel prevents a party from asserting a factual position in one legal proceeding that's contrary to a position that it successfully advanced in another proceeding". Here, aside from the lack of inconsistencies, the positions that have been taken are legal not factual. And

there, New GM didn't ask the Santa Monica Motors court to interpret or enforce the wind-down agreement or, indeed, to interpret or enforce the Dealer Arbitration Act at all. The latter point is why I think that New GM was just wrong when it then tried to invoke the latter as a basis for 1331 jurisdiction. I'm not sure what it was thinking. But under the standards of New Hampshire v. Maine, I find that the positions are not clearly inconsistent and I cannot find any perception that either the first or the second Court was misled or that New GM would derive an unfair advantage here if not estopped.

Finally, I think that even if judicial review were available of the arbitrator's award, I couldn't vacate the arbitrator's award here. First, even if the arbitrator was wrong, I don't see the arbitrator having been so wrong that the error would warrant bucking fundamental principles limiting the scope of review of arbitration awards. There was no case supporting Rally on this issue. Rally is, in substance, asking the Court or the Courts to, in essence, make new law on this point.

And assuming, though for reasons I just noted, I think this assumption is unwarranted, that I could provide ab initio review of the arbitrator's decision, I think the arbitrator got it right at least on the arbitrator's assumption that he could rule one way with respect to the Buick, GMC and

Cadillac franchises and differently with respect to the Chevy franchise. I think the dealer's sales and service agreements have to be read separately. Each stated that it was executed by GM "separately" on behalf of its division identified in the specific addendum. And each dealer agreement provided that the agreement for each line make is independent and separately enforceable by each party and the use of the common form is intended solely to simplify execution of the agreements. So I think that in light of that, Rally had five franchise agreements under which the arbitrator's ruling focusing on each brand separately would be more than merely reasonable. If otherwise warranted by the underlying facts, it would be right.

For the foregoing reasons, New GM is to settle an order in accordance with the foregoing as quickly as reasonably possible, that order to be settled on no less than two business days' notice by hand, fax or e-mail. I assume that New GM will use one of those methods so I don't have to provide for an alternative mechanism if it were to use snail mail. The time to appeal from this determination will run from the time of that order's entry and not from the time of this dictated decision.

All right. Not by way of reargument, are there any matters that I failed to address or any questions?

MR. SNYDER: No, Your Honor.

THE COURT: Hearing none, we're adjourned. Good

evening, folks.

MR. SNYDER: Your Honor, if I may just quickly?

THE COURT: Yes, Mr. Snyder?

MR. SNYDER: Your Honor, under Bankruptcy Rule 8005, to the extent we seek a stay pending appeal and that would be a necessary predicate for an award, for the reasons set forth in our papers and in the oral argument, I request -- am making this oral application for a stay of Your Honor's order pending appeal.

THE COURT: I'll accept the oral application for a stay but we'll do it after a ten minute recess. And each of you can make your points at that point in time.

MR. SNYDER: Thank you, Your Honor.

(Recess from 6:19 p.m. until 6:37 p.m.)

THE COURT: Have seats, please. Okay. Mr. Snyder, your application for a stay.

MR. SNYDER: Thank you, Your Honor. Your Honor, in your decision, I believe the Court stated -- and I apologize if I'm putting words in the Court's mouth -- that areas such as manifest disregard for the law and fraud were not areas that were alleged here. And that might be properly the province if not exclusively the province of the district court in California. And I would ask the Court to turn to, Your Honor, Exhibit I which is Rally's petition to modify. And in Exhibit I, Your Honor, starting on page 10, whether appropriately or

not, Rally uses the Federal Arbitration Act as a guide as to what the district court can look to when determining whether it has jurisdiction. And it starts at the bottom of page 10, and I'm quoting, "that the arbitrator in this matter was guilty of misconduct, misbehavior and exceeded his power, i.e., manifest disregard by ruling on a matter not submitted for determination and, (2)attempting to fashion a remedy not authorized by Section 747 of the Act." And the argument goes on and a little farther down, it addresses corruption, fraud and undue means by GM which, again, although it mirrors a section of the FAA, is also grounds that Rally sought in the California district court in order to vacate and modify the arbitration. So I wanted the record clear that the manifest disregard of the law, fraud and the usual grounds that a party would seek whether under a state statute or the federal arbitration statute to undo the arbitration were pled by Rally in the California action. And so, I believe that those types of matters, and I believe Your Honor pointed this out, matters of manifest disregard, fact and law as well as fraud, corruption, mistake and exceeding powers are matters that the California district court should hear -- can hear, excuse me, and should hear.

Your Honor, has basically said that you have sole and exclusive jurisdiction even though the district court may have jurisdiction over these matters. And as respectfully submitted that the Court may have concurrent jurisdiction but over

matters such as manifest disregard of the law that the federal district court in California also has jurisdiction over this matter. And it's properly before it now.

With respect to the federal question, again, Your Honor seemed to indicate in his decision that the sole and exclusive jurisdiction was given to the bankruptcy court as a result of the wind-down orders. The Court did not address as we go through in detail, starting at page 28 of our objection, the decision of the Supreme Court in Vaden v. Discover Bank. And I alluded to it, Your Honor, in the original argument. But the Supreme Court, overturning, I believe, four circuit courts in Vaden, specifically held that they can look through the petition to look at the parties' underlying substantive controversy. And, Your Honor -- and this is where the Court and Rally might differ. The substantive controversy, the predicate of the petition arises under the Dealer Arbitration Act. It does not arise under the wind-down agreement because it was created not from the wind-down agreement but the Dealer Arbitration Act. So I think there's compelling reasons as a result of the recent Supreme Court case in Vaden to allow the federal district court to hear a federal controversy arising out of a federal statute. And I've been practicing here for a long time, Your Honor. To the extent that it's an issue involving a purchaser wanting to get its -- the value of what it bargained for, we are not saying this Court does not have

jurisdiction. The Court has already held that it has arising-to jurisdiction and it may well have that jurisdiction.

But I think I've pointed to at least two, the federal question issue as well as the due process constitutionality issue as to why the California district court has strong -- strong subject matter -- rights to exercise its subject matter jurisdiction. This is not a cursory -- a statute that only cursorily affects the federal court, but it directly affects the federal court. And I believe, Your Honor, for those reasons, the Court not entertaining or analyzing that and then not seeing that the petition itself does seek -- does allege manifest errors of law as well as fraud and improper powers by the arbitrator that we would be successful on the merits. And we would be able to, Your Honor, obtain a stay of Your Honor's order to the extent it would give us additional time to seek a stay or to seek a determination in either the district court here or in California.

THE COURT: Well, I understand your desire to go to the district court here. I have more trouble trying to go to the district court in California. In fact, that walks, talks and quacks a lot about the actions that Judge Weinfeld found so objectionable in Teachers Insurance v. Butler before the Second Circuit said what it said in Teachers Insurance v. Butler where there was never to collaterally attack his judgment by going to another court. I mean, I don't claim to be infallible, Mr.

Snyder, but it seems to me that if somebody's going to say that I'm wrong, it's got to be either the district court or the Second Circuit.

MR. SNYDER: Your Honor, we were in front of the California district court before GM was here. We can always go back to the filing of the bankruptcy case. But this is clearly different than Teachers. Here, we have already commenced an action in the California district court. We're not forum shopping and running to California because we don't like what the Court is saying. We deferred in this case because they made the motion that we were going to defer to the bankruptcy court before we took any action in California. But we're not looking around for a second bite of the apple. We're already in California. Issues already been joined. They've already answered. So we're at summary judgment stage anyway in California and we have a ticking clock of October 31st. That's very different than going to another Court when you don't like what this Court has to say, Your Honor. I mean, I don't know if we need to address that here. But that's not what we're looking to do. It's for powers other than I to decide whether we seek a stay here or we go back to the Court where there's been a complaint and answer filed and seek a stay there. I'm being straightforward with the Court. It's not our intent and I know the Court might have discomfort with that, but the action was already commenced there. And that's what led to GM

coming here.

THE COURT: Well, forgive me, Mr. Snyder. The reason that you can truthfully say it's discomfort is because I try very hard to consume my anger and to maintain my demeanor. I fully understand the rights of any litigant before me to take me up the street. But going to another Court right after you've litigated before me for the last three hours and I've given you a ruling which may or may not be right but which was after a lot of thought and effort is one that is more than a source of discomfort.

Why don't you continue with the remainder of the three bullets on the applicable case law on an entitlement to a stay and address, if you will, what you're prepared to offer in the way of a bond if I grant a stay?

MR. SNYDER: Your Honor, the argument with respect to the constitutionality -- I had made the argument with respect to whether a federal question exists vis-à-vis the interpretation of the federal statute and going behind the arbitration. I made as well -- I would point out, Your Honor, actually there are four grounds. The third one is diversity. And I think although GM was silent on it, the Court, I believe, in its decision, admitted that diversity exists but, again, stated that the sale order would trump the district court even though diversity might existed there. And the fourth argument, Your Honor, is 48(c) and Your Honor is correct. It does just

refer to judgment. It does not refer to the right to vacate or amend or to modify. It's respectfully submitted, though, Your Honor, that the district court can make that decision as well. Your Honor may be right in all they can do is say thumbs up or thumbs down with respect to a judgment. But at least with respect, I believe, to the fifty state laws, with respect to arbitration and the FAA, it's not so limited, that applicants are usually allowed by statute, certainly under the FAA, to not only seek a judgment but to modify or vacate. But that's something the California district court may hold as well, Your Honor.

And because there are five sep -- four separate grounds, the constitutionality, the federal question, the diversity and Rule 48(c), in Rally's mind, is more than a compelling reason to hold that concurrent jurisdiction exists and not simply exclusive jurisdiction exists. That Your Honor's sale order says what it says but that the Arbitration Act raises issues that need to be addressed. And it's submitted by saying diversity exists but the sale order trumps it, Your Honor, I would suggest that the district court in California does have jurisdiction and does also have the authority to hear these issues. And for those reasons, I think the Court or Rally would be successful in arguing that it would be successful on the merits on those four particular grounds.

I would state also, Your Honor, that the judicial

estoppel argument is just fascinating to me. I -- you asked a question of GM and it was your last question, I believe, which was are you saying you could have gone to New York or California but you decided to go to California. And they said yes. And so, what they're basically saying is we can go to California or New York but you can't. And that argument is, in essence, saying we've waived subject matter jurisdiction by entering into the wind-down agreements. And I don't believe that's correct. And I believe if GM can go into New York and California then Rally can go into New York and California. And to simply say that we're -- our fortunes rise and fall here, well, neither -- GM's fortunes didn't rise and fall here either. They chose not to come here. And so I think we should have that same right.

And for those reasons, Your Honor, we'd like a stay of Your Honor's order until there is an appropriate order of the district court.

THE COURT: All right. Mr. Steinberg?

MR. STEINBERG: Your Honor, in the context of the order that you've indicated that you will enter, a stay pending appeal makes no sense. And the whole oral argument that you heard here before was really a reargument motion and was not a stay pending appeal motion.

Your Honor has indicated that it was inappropriate for them to go to California and to continue to prosecute the

action in California. So if you're going to stay the entry of the order, what does that mean as a practical matter? After having ruled that it was improper to go to California, he now is actually asking you to stay that order so he can go to California? Which is 180 degrees of the relief you just granted? This is not like he has a judgment and he wants to stop us from enforcing the judgment because he wants to take his appellate rights. I'm trying to collect on a monetary judgment. This is started because he shouldn't have gone to California in the first place. He shouldn't have violated the wind-down agreement. He should have done -- he didn't have a judicial right. And now he's asking Your Honor to stay it so he can, in effect, do what he started to do which was the reason why we brought the motion in the first place.

But I think he didn't answer your question what are the four prongs for a stay pending appeal. He did talk about the likelihood of success on the merits. And I don't think he said anything today other than try to reargue what Your Honor had just ruled upon as to the likelihood of success on the merits.

Frankly, the other three grounds all, I think, favor New General Motors. The harm to the appellant -- well, on the surface, one could say he's harmed because the Chevrolet dealership will be terminated on October 31st. The actual harm is that he didn't have a judicial right and you're not

depriving him of a judicial right. Conversely, the harm to others being the appellee, which is New General Motors and the new dealership, are dramatic if Your Honor's order is not enforced. And Your Honor's opinion addressed the public interest element which is the necessity of protecting buyers in a Section 363 order and the Court's exclusive jurisdiction and the public interest that's involved there.

I think the only other thing I would add, and it has nothing to do with the stay pending appeal other than the likelihood of success, I'll just point out that he wants to refer to the complaint that was -- the petition that was filed by Rally in California. On the corruption, fraud and undue means by General Motors, that's just a label that he put on a caption in a petition. He does not allege one thing about fraud corruption in connection with the arbitration process. He's saying that there were public statements made by Fritz Henderson as to, in general, the importance of a dealership network, and he's saying that that was misleading. But it has nothing to do with actually what happened in the arbitration and under the Dealer Arbitration Act. And as far as the misconduct being beyond prec -- established precedent, if you read the paragraph, what he's saying is that the award goes beyond Section 747 because they believe that that statute, which is absolutely silent on the issue, doesn't allow for the assumption of one dealership -- the rejection of one dealership

agreement and the assumption or the reinstatement for the other three. That's the misconduct of going beyond what is established precedent.

Your Honor's decision ruled that if you had to address the merits, even though you weren't, you thought that New GM and the arbitrator was right on that issue. So he can point to a petition, which is based on the Federal Arbitration Act, citing standards but have no application to the facts of this case and then everything else on the standards for a stay pending appeal warrant for the denial of the stay.

And he purposely didn't answer your question as to a bond because, at this point in time, the bond -- we're not looking for a bond. We're looking for the relief that we brought our motion for. And a stay pending appeal is, in effect, a denial of our motion which Your Honor just granted.

(Pause)

THE COURT: Stand by, everybody. Sit in place.

(Pause)

THE COURT: Gentlemen, in this supplemental proceeding, Rally moves by oral motion, with my consent, for a stay pending appeal. And I am granting its motion to the extent of providing for a seven calendar day stay to permit Rally to go to the district court in this district. And the motion is otherwise denied. The following are the bases for my exercise of discretion in this regard.

Though I have no memory of hearing it expressly invoked, a motion of this character is governed by Federal Rule of Bankruptcy Procedure 8005. It provides in relevant part that "A motion for a stay of the judgment order or decree of a bankruptcy judge for relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance...A motion for such relief" granted by -- "or for modification or termination of relief granted by a bankruptcy judge may be made to the district court but the motion shall show why the relief, modification or termination was not obtained from the bankruptcy judge. The district court...may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court."

As the language I just quoted makes clear, the rule is not terribly helpful with respect to the standards for considering a motion of that character. Rather, for that, we look to the case law which, in the bankruptcy appellate arena, takes a considerable amount of guidance from similar issues presented under the FRAP, the Federal Rules of Appellate Procedure.

I exercise my discretion in accordance with my earlier decision, coincidentally in General Motors, at 409 B.R. 24, and the affirmants by Judge Kaplan of the district court in 2009 U.S. District Court Lexis 61279. As I stated in my ruling there, in GM, the decision as to whether or not to grant the

stay of an order pending appeal lies with the sound discretion of the Court. See, for example, In re Overmyer, 53 B.R. at 955. Though the factors that must have to be satisfied have been stated in slightly different ways and sometimes in a different order, it's established that to get a stay pending appeal under Rule 8005, a litigant must demonstrate it would suffer irreparable injury if a stay were denied; there is a substantial possibility, although less than a likelihood of success on the merits of a movant's appeal; other parties would suffer no substantial injury if the stay were granted; and that the public interest favors a stay. See, for example, Hirschfeld v. Board of Elections, 984 F.2d at page 39. It's a decision of the Second Circuit in 1992; In re DJK Residential, 2008 U.S. Dist. LEXIS 19801; and 2008 WL 650389, a decision by Judge Lynch back when he was a district judge; and In re Westpoint Stevens, 2007 U.S. Dist. LEXIS 33725, 2007 WL 1346616, a decision by Judge Swain of the district court.

The burden on the movant is a "heavy one". See, for example, DJK at *2. See also U.S. v. Private Sanitation Industrial Assoc., 44 F.3d 1082 at page 1084, another decision of the Second Circuit. To be successful, the party must "show satisfactory evidence of all four criteria". In re Turner, 207 B.R. at page 375, a decision of the former Second Circuit BAP in 1997. Moreover, if the movant seeks the imposition of a stay without a bond, the applicant has the burden of

demonstrating why the Court should deviate from the ordinary full security requirement. See DJK at *2, Westpoint Stevens at *4.

While, as Judge Lynch noted in DJK, the Second Circuit BAP has held that the failure to satisfy any prong of the four-circuit test "will doom the motion," with Jerry Lynch having cited Turner. The Circuit in more recent cases have engaged in a balancing process with respect to the four factors as opposed to adopting a rigid rule. In my earlier ruling in GM, I assumed without deciding that the balancing approach would be more appropriate. And I'm going to do likewise here. I also note that when Judge Kaplan affirmed me in GM in the decision that I described a few minutes ago, I think he took a similar approach.

Let me start with injury first. Obviously, I take the loss of a franchise seriously. And indeed, early in the decision that I dictated -- I guess it's now an hour or an hour and a half ago -- I did hopefully express my empathy to dealers losing their franchises. However, what caused the lack of the franchise, or the loss of the franchise, is not the ruling that I issued tonight. It was the dealer termination agreement that was entered into over a year ago. What we have here is Congress recognizing the injury to dealers as a consequence of either rejection of dealership agreements, as was the case in Chrysler, or even the soft landing termination agreements that

we had here, provided dealers with an arbitration remedy to, in essence, undo that which otherwise would happen. And Rally took advantage of that and it won in three-quarters -- or four-fifths -- Pontiac, I guess, ultimately not being relevant -- of the matters which it took before the arbitrator. Now, in essence, what it's asking for is to avoid the injury from a year ago and at the same time to avail itself of the benefits of the arbitration to the extent that it won. With it having won with respect to Buick, Cadillac and GMC, I don't think there is irreparable injury to it by reason of its not having shot the moon in its litigation efforts before the arbitrator.

Frankly, folks, I tried very hard to get it right. And we're going to get to a likelihood of success in a minute. But I do not believe that my ruling today causes irreparable injury. And I think really all we're talking about is the results of an arbitration system that was made available for Rally and for which it only succeeded in part.

I will, however, assume that there is a -- at least a peppercorn of irreparable injury. I'm certainly not going to disqualify Rally for not showing more in the way of irreparable injury. And I'm not, as I indicated, going to require it to make a strong showing on all fours. I am going to take a balancing approach so I'm going to turn to that next.

So let's talk then about likelihood of success which is where Rally spent the bulk of its argument. Although we

talk about likelihood of success, that's a shorthand for a more nuanced analysis. The technical standard is there is a substantial possibility although less than a likelihood of success on the merits. Well, let's slice and dice the various aspects of my earlier ruling.

First, the propriety of my conclusion that I do have subject matter jurisdiction and that I have core jurisdiction -- core, of course, not being the subject matter jurisdiction issue but talking about the power of a bankruptcy judge in contrast to a district judge to decide. Those two rulings now seem to be accepted or at least unchallenged. And although there was no express discussion of my decision not to abstain, I didn't hear any argument on that. And, frankly, discretionary abstention is called discretionary for a reason. There would have to be an abusive discretion in my electing not to abstain. And I think that there would not be a material likelihood of success on that and would be far short of a substantial possibility.

On the merits, it's undisputed that we're not talking about the Federal Arbitration Act, that the Dealer Arbitration Act provides no right to appeal. And my ruling did not go so far as to say that under no circumstances under anything that might ever be alleged would I deny the right to appeal. What I have said is that to the extent, if any, to which there would be such a right, a construction to, in essence, save the

constitutionality of the statute if it were otherwise put in question, there would have to be something seriously wrong with the arbitration in the way of fraud, corruption, bribery being a species of corruption, or, and I articulated it differently, disregard of applicable authority. I went on to provide two additional levels -- you can call it dictum; you can call it alternative grounds, whatever, which caused me to believe that it's not likely that there's going to be a reversal.

And as far as whether there's a substantial possibility, on the facts that were put before me, I don't think there's even that. To be sure, words were put before the district judge triggering responses that if this were an action under the Federal Arbitration Act would get a judge's attention. But as the recent decisions by the Supreme Court in Bell Atlantic v. Twombly and, especially, Ashcroft v. Iqbal tell us, just invoking words making conclusory allegations in a pleading isn't enough. You can't talk about corruption without giving the Court some facts as to lead the Court to believe there was corruption. And we're not talking about corruption by GM. We're talking about corruption by the arbitrator. I used the example before of taking bribes. There are no allegations of ex parte communication. There are no allegations of any irregularities in the proceedings before the arbitrator other than the assertion that, as a matter of law, the arbitrator got it wrong. And even then, there's no

allegation that the arbitrator disregarded any particular case that would suggest to the arbitrator that he got it wrong. So while I think there would be a substantial possibility of success on appeal if I were somehow to rule that there is no right to appeal and that I got to close my eyes to irregularities of the type that I just described if they were shown, it doesn't affect the outcome here because I don't have any facts suggesting any of those things. Bottom line, folks, I do not find a substantial possibility.

Third factor. Other parties would suffer no substantial injury if the stay were granted. And here, I think there are potential injuries, at least if we go past October 31st, of one type, for sure, and another which more properly may be regarded as being a public interest concern rather than a private prejudice. For GM's benefit, I'll say that I see no prejudice in staying for five days to allow the district court to second guess me on the stay application. And for that reason, I am going to grant a stay to the extent of five days.

But we have a new dealer who's taking over on the 31st of October. I don't have evidence on it, but I got to assume that the existing franchisee's gain is going to be the new one's loss. They're either going to be competing with each other or that other guy is going to be made to wait if this thing can't proceed past October -- if this somehow proceeds past October 31st. And we have a nationwide program which was

judicially blessed back in July of last year for these dealer unwinds and I think it's prejudicial to New GM to put this system in play to any greater extent than Congress did by its statutory enactment. And Congress didn't say everything you're doing is undone. What it did was say well, we're going to set up this arbitration mechanism. And that's exactly what we got. And it goes without saying that I comply with the congressional but I don't think we should be going beyond what Congress said.

Lastly, the public interest favors a stay. That's the final factor. While I quoted the language before, and I think Rally acknowledged its importance, that we deliver to the purchasers of assets in bankruptcy sales that which we have promised. And if and to the extent that the counterparty to a deal with an estate comes back and says I need you to enforce it so I get the benefit of what I had bargained for, we do that.

I talked back at the time of the original 363 determination and my separate ruling on the stay application that followed my 363 ruling by a couple of days about how important GM's survival is to the public interest and the interest not just of the federal taxpayers but the needs and concerns of the states of Michigan and Ohio and the communities in which GM plants operate. We made decisions then about that which was necessary to give New GM the maximum opportunity to thrive. We made rulings then which are res judicata. I don't

think the public interest is served by interfering with what we then put in place in any way.

Certainly, there is no public interest in allowing this collateral attack. It's a private interest to the extent it's any interest. And when a party that was offered and availed itself the opportunity to arbitrate then wishes to take the portion for which it did not win and put the earlier system in play beyond getting the arbitration opportunity for which Congress provided, that is, at the least, not in the public interest and may fairly be regarded as being contrary to the public interest. At best, looking at it most favorably to Rally, it is a wash because it is private interests that are being sought to be advanced and not public ones.

So, as my discussion indicates, folks, I think we got to go by the book and deal with it as I did in my decision dictated just a moment ago by the four enumerated factors articulated in the case law for the grant of a stay. And it is stayed to permit a second opportunity to go to the district court for those seven calendar days. And so as not to put a gun to the head of the district court having to issue a decision, like Judge Kaplan did where he had to work all night on it, I don't want to do that to the district court again if I can avoid it.

But beyond that, it is denied. Rally is authorized and requested, not ordered, but requested to advise the

district court that an application was made to the bankruptcy court, that the bankruptcy court denied it except to the extent of the five days for the reasons that it dictated into the record and that any further application to the bankruptcy court is dispensed with and waived. From now on, we're in the district court, folks.

Yes, sir?

MR. STEINBERG: Your Honor, I just have some brief moments and I thank you for staying so late for today. In your presentation in connection with the stay pending appeal, you said seven calendar days but I believe you also said at one point in time five days. So --

THE COURT: If I did, it was a reference to five business days. Seven calendar days transposes into five --

MR. STEINBERG: Okay.

THE COURT: -- business days. And ever since we amended the federal rules of many different types last December, we now go on bunches of seven calendar days.

MR. STEINBERG: The second thing, Your Honor, is that while I'm not exactly sure what I would have otherwise done during the seven calendar day period because the wind-down agreement is fairly passive, I do want to make sure that I'm still able to present to Your Honor the order that you had asked for --

THE COURT: Of course you can.

MR. STEINBERG: Okay. And I think that's it. I understand that the only activity that will happen from this point on is in the district court of this district.

THE COURT: Correct. All right. It's been a long day. Good evening, gentlemen. We're adjourned.

(Whereupon these proceedings were concluded at 7:23 p.m.)

I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Motion of New GM for an order enjoining Rally Dealership from interfering with New GM's ability to reform its dealership platform, from vacating or modifying an arbitration decision and from pursuing that effort in California district court granted	41	8
Court declines to exercise its discretionary abstention	50	12
Oral motion by Rally Auto for a stay pending appeal granted for five business days to permit Rally to go to district court;	71	21
but denied in all other respects	71	24

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

_____

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET**D-486)

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: October 6, 2010

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 10-2683-AHM (VBK.x)	Date	October 22, 2010
Title	Rudolfo Fidel Mendoza v. General Motors, LLC		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE	
S. Eagle	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys **NOT** Present for Plaintiffs: Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

On the Court's own motion, the Court hereby takes OFF-CALENDAR and UNDER SUBMISSION defendant's Motion to Dismiss [15] previously set for 10/25/10. The parties will be notified if a hearing is necessary.

Initials of Preparer se

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Attorneys for Defendant
General Motors LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUDOLFO FIDEL MENDOZA, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV 10-2683 AHM (VBKx)

CITATION TO AND COPY OF RECENT DECISION RE 28 U.S.C. § 1412

Hearing Date: October 25, 2010
Time: 10:00 a.m.
Courtroom 14
Honorable A. Howard Matz

TO THE COURT AND COUNSEL FOR PLAINTIFF:

Defendant General Motors LLC ("New GM") respectfully calls the Court's attention to the following decision of the United States District Court for the Northern District of Iowa rendered on October 12, 2010, the day after New GM's Reply Memorandum was due in this case; the Thys Chevrolet decision addresses among other things New GM's motion in that case for transfer to the Southern District of New York under 28 U.S.C. §1412. Thys Chevrolet, Inc. v. General Motors LLC, 2010 U.S.Dist.LEXIS 108469, 2010 Westlaw 40004328 (N.D.Iowa, October 12, 2010). For the Court's convenience, a copy of the decision is attached.

Dated: October 25, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: *[s] Gregory R. Oxford*
Gregory R. Oxford
Attorneys for Defendant
General Motors LLC

LEXSEE 2010 U S DIST LEXIS 108469

THYS CHEVROLET, INC. and FAMILY AUTO CENTER, INC., Plaintiffs, vs. GENERAL MOTORS LLC, Defendant.

No. 10-CV-46-LRR

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA, CEDAR RAPIDS DIVISION

2010 U.S. Dist. LEXIS 108469

October 12, 2010, Decided
October 12, 2010, Filed

COUNSEL: [*1] For Thys Chevrolet Inc, Family Auto Center Inc, Plaintiffs: Harry W Zanville, LEAD ATTORNEY, San Diego, CA; James H Arenson, LEAD ATTORNEY, Arenson & Maas, PLC, Cedar Rapids, IA.

For General Motors LLC, Defendant: Gregory M Lederer, LEAD ATTORNEY, Lederer Weston Craig PLC, Cedar Rapids, IA; J Todd Kennard, Jeffrey J Jones, PRO HAC VICE, Jones Day, Columbus, OH.

JUDGES: LINDA R. READE, CHIEF JUDGE, U.S. DISTRICT JUDGE.

OPINION BY: LINDA R. READE

OPINION

ORDER

TABLE OF CONTENTS

I. INTRODUCTION

The matters before the court are Defendant General Motors LLC's "Motion [*2] to Dismiss or, in the Alternative, Transfer Venue to the United States Bankruptcy Court for the Southern District of New York" ("Motion to Dismiss") (docket no. 12) and "Motion for Leave to Submit Ruling from Monday Enjoining Dealer Action Issued by the United States Bankruptcy Court for the Souther District of New York" ("Motion for Leave") (docket no. 34).

II. PROCEDURAL BACKGROUND

On August 26, 2010, Plaintiffs Thys Chevrolet, Inc. ("Thys Chevrolet") and Family Auto Center, Inc. ("Family Auto") filed a Complaint (docket no. 2) seeking injunctive relief. That same date, Plaintiffs filed a "Verified Complaint and Motion for Preliminary and Permanent Injunctive Relief" ("Motion for Injunctive Relief") (docket no. 3). Plaintiffs requested expedited relief. On August 31, 2010, the court entered an Order (docket no. 5) setting a hearing on the Motion for Injunctive Relief for September 16, 2010.

On September 10, 2010, Defendant General Motors LLC ("New GM") filed a "Motion to Postpone Preliminary Injunction Hearing Scheduled for September 16, 2010, Hold an Expedited Status Conference, and Establish Briefing Schedule on Legal Issues" ("Motion to Continue") (docket no. 7). In the Motion to [*3] Continue, New GM indicated that it would seek dismissal of the instant action on the grounds that the Bankruptcy Court for the United States District Court for the Southern District of New York ("Bankruptcy Court") "has exclusive jurisdiction to resolve the issues raised in the Complaint." Motion to Continue at 1.

On September 10, 2010, the court held a telephonic status conference to address the issues raised in the Motion to Continue. That same date, the court entered an Order (docket no. 10) granting the Motion to Continue to the extent it sought to postpone the hearing on the Motion for Injunctive Relief. The court directed the parties to file simultaneous briefing on or before September 14, 2010 to address the court's jurisdiction.

On September 14, 2010, New GM filed the Motion to Dismiss. That same date, Plaintiffs filed a "Brief in Support of Exclusive Subject Matter Jurisdiction Over This Matter in the United States District Court" ("Plaintiffs' Brief") (docket no. 14). On September 15, 2010, New GM filed a brief ("New GM's Brief") (docket no. 20) in support of the Motion to Dismiss. On September 23, 2010, New GM filed a supplemental brief ("New GM's Supp. Brief") (docket no. [*4] 24) in support of the Motion to Dismiss. That same date, Plaintiffs filed a supplemental brief ("Plaintiffs' Supp. Brief") (docket no. 25) in support of their resistance to the Motion to Dismiss.

On September 27, 2010, the court held a telephonic hearing ("Hearing") on the Motion to Dismiss. Attorneys James Arenson and Harry Zanville appeared on behalf of Plaintiffs. Attorneys Jeffrey Jones and Greg Lederer appeared on behalf of New GM. At the conclusion of the Hearing, the court reserved ruling on the Motion to Dismiss pending the instant order. That same date, Plaintiffs filed a "Supplemental Filing" (docket no. 29) in reference to an exhibit discussed at the Hearing. On September 30, 2010, New GM filed a "Response to Plaintiffs' Supplemental Response/Addendum" (docket no. 33).

III. FACTUAL BACKGROUND

A. Players

Family Auto is an Iowa corporation with its principal place of business in Toledo, Iowa. Family Auto used to be an automobile dealership and was licensed by the State of Iowa to sell new Chevrolet and Buick automobiles. Edward Polaco owns Family Auto.

Thys Chevrolet is an Iowa corporation with its headquarters in Toledo, Iowa. It is an automobile dealership owned by Joel Thys [*5] and licensed by the State of Iowa to sell new Chevrolet and Buick automobiles.

New GM is a Delaware limited liability company with its principal place of business in Michigan. New GM designs, manufactures, distributes and sells motor vehicles and parts to authorized GM dealerships. Buick Motor Division ("Buick") is a division of New GM. "[New] GM and Buick conduct business in the Northern District of Iowa, pursuant to numerous franchise dealer sales and service agreements ("DSSA") with GM dealers." Motion for Injunctive Relief at P 7.

B. GM's Bankruptcy and the Wind-Down Agreements

On June 1, 2009, General Motors Corporation ("Old GM") filed for bankruptcy in the Bankruptcy Court, Case No. 09-50026. In the bankruptcy proceedings, Old GM sought to sell certain assets to a new company (the "363 Acquirer") under *Section 363 of the Bankruptcy Code* pursuant to certain conditions approved by the Bankruptcy Court (the "*Section 363* Sale").

As part of Old GM's reorganization, it executed "wind-down agreements" with numerous GM dealers. On June 12, 2009, Old GM and Family Auto executed a "Wind-Down Agreement" in which Family Auto agreed to wind-down its Buick operations by October 31, 2010, in exchange [*6] for monetary payments and other terms. [1] Exhibit A to Affidavit of Michael Poindexter (docket no. 20-2) at 5. In the Wind-Down Agreement, Family Auto agreed it would not propose or consummate a change in ownership or a transfer of its business or assets:

> [Family Auto] shall not, and shall have no right to, propose to [Old] GM or the 363 Acquirer . . . or consummate a change in Dealer Operator, a change in ownership, or, subject to [Old] GM's or the 363 Acquirer's, as applicable, option, a transfer of the dealership business or its principal assets to any Person . . . . Accordingly, neither [Old] GM nor the 363 Acquirer, as applicable, shall have any obligation . . . to review, process, respond to, or approve any application or proposal to accomplish any such change, except as expressly otherwise provided in the preceding sentence.

Id. at 9-10. The Wind-Down Agreement also provided that:

> 13. Continuing Jurisdiction. By executing this Agreement, [Family Auto] hereby consents and agrees that the Bankruptcy Court shall retain full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this Agreement and any other matter related thereto. [*7] The terms of this [clause] shall survive the termination of this Agreement.

Id. at 11.

1 Family Auto's Chevrolet operations were not subject to the Wind-Down Agreement and are not at issue in the instant action.

C. The Bankruptcy Court Approves the Sale

On June 1, 2009, Old GM and other affiliates (collectively, the "Debtors") filed a motion under *§ 363* seeking the Bankruptcy Court's approval to proceed with the sale. On July 5, 2009, the Bankruptcy Court issued an order ("Sale Order") approving the proposed sale of Old GM's assets. The Sale Order provides, in relevant part:

> 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 . . . .

New GM's Exhibit B (docket no. 7-3) at 14. The Bankruptcy Court found that "[t]he Purchaser would not have entered into the [Master Sale and Purchase Agreement] and would not consummate the 363 Transaction . . . if the sale of the Purchased Assets was not free and clear of all liens, [*8] claims, encumbrances, and other interests (other than Permitted Encumbrances), ..." *Id.* at 16.

The Bankruptcy Court found that Old GM offered wind-down agreements to many dealers "as an alternative to rejection of the [dealers'] existing Dealer Sales and Service Agreements" and found that the wind-down agreements "provide substantial additional benefits to dealers which enter into such agreements." *Id.* at 20. The Bankruptcy Court noted that "[a]pproximately 99% of the dealers offered Deferred Termination Agreements [2] accepted and executed those agreements and did so for good and sufficient consideration." *Id.* (footnote added). Accordingly, the Bankruptcy Court approved Old GM's entrance into the wind-down agreements and found that

they "represent valid and binding contracts, enforceable in accordance with their terms." *Id.* at 35.

> 2 The Sale Order provides that the term "Deferred Termination Agreements" includes "Wind-Down Agreements." *Id.* at 19.

The Bankruptcy Court also reserved exclusive jurisdiction over matters concerning the Sale Order and the wind-down agreements:

> This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the [Master [*9] Sale and Purchase Agreement], 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 . . . resolve any disputes with respect to or concerning the Deferred Termination Agreements.

Id. at 49. Upon the Bankruptcy Court's approval of the *Section 363* Sale, the 363 Acquirer was reorganized and assigned the wind-down agreements to New GM.

D. Section 747 Arbitration

In December of 2009, Congress enacted § 747 of the Consolidated Appropriations Act, 2010, Pub. Law No. 111-117, 123 Stat. 3034 (2009) ("Dealer Arbitration Act" or "§ 747"). Section 747 gives a "covered dealership" [3] the right to seek, through binding arbitration, continuation or reinstatement to the dealer network. § 747(b). In deciding whether a dealer should be reinstated or continued, the arbitrator must balance the economic interest of the covered dealership, the covered manufacturer and the public at large. § 747(d). The arbitrator must consider a variety of factors, including the dealer's profitability, the "manufacturer's overall business plan," [*10] the dealer's "economic viability," the "demographic and geographic characteristics" of the dealer's market territory and "the length of experience of the covered dealership." *Id.*

> 3 A "covered dealership" is "an automobile dealership that had a franchise agreement for the sale and service of vehicles . . . in effect as of October 3, 2008, and such agreement was terminated, not assigned[,] . . . not renewed, or not continued during the period beginning on October 3, 2008, and ending on December 31, 2010." § 747(a)(2).

If the arbitrator finds in favor of a dealer, "the covered manufacturer shall as soon as practicable, but not later than 7 business days after receipt of the arbitrator's determination, provide the dealer a customary and usual letter of intent to enter into a sales and service agreement." § 747(e). "After executing the sales and service agreement and successfully completing the operational prerequisites set forth therein," the dealer must return to the manufacturer any financial compensation the manufacturer provided in consideration of its initial decision "to terminate, not renew, not assign or not assume the covered dealership's applicable franchise agreement." *Id.*

On January [*11] 25, 2010, Family Auto submitted its notice of intent to arbitrate pursuant to § 747.

E. Family Auto Sells its Assets to Joel Thys

On February 27, 2010, with the arbitration pending, Family Auto executed an Asset Purchase Agreement with Joel Thys. Specifically, Joel Thys contracted to buy Family Auto's assets--defined as its "[s]eller goodwill in connection with its General Motors business and its rights, as they may exist, to operate the Chevrolet and Buick franchises"--for $750. Plaintiffs' Exhibit 4 (docket no. 2-2) at 22 (emphasis removed). On March 3, 2010, Family Auto and Joel Thys closed on the Asset Purchase Agreement. On March 5, 2010, Family Auto and Joel Thys executed a "Management Contract" under which Family Auto granted Joel Thys the right to operate the GM franchise, use all equipment and inventory, and "operate the dealership under Family Auto Center['s] Iowa dealer['s] license DL1130." Plaintiffs' Exhibit 6 (docket no. 2-2) at 29. Additionally, Joel Thys agreed "to lease the property on a month to mont[h] basis for the amount of $100.00[.]" *Id.*

F. Letter of Intent

On March 11, 2010, New GM offered Family Auto a letter of intent ("Letter of Intent" or "Letter"). In the Letter [*12] of Intent, New GM stated that it had "carefully reviewed [Family Auto's] situation in light of the provisions of the Arbitration Statute to determine if [New GM] wish[ed] to proceed with the arbitration process." Plaintiffs' Exhibit 10 (docket no. 2-2) at 37. New GM stated it was "pleased to offer [Family Auto] this letter of intent, as provided for in the Arbitration Statute . . . concerning the Buick brand(s) . . . ." *Id.*

In the Letter of Intent, New GM offered to reinstate Family Auto's Buick franchise if Family Auto complied with certain conditions set forth in the Letter. If Family Auto satisfied the conditions, New GM agreed to reinstate Family Auto's Buick franchise by "amending the existing Wind-Down Agreement in place between [Family Auto] and GM for the [Buick] vehicles." *Id.* Among

other conditions, New GM asked Family Auto to: (1) withdraw its § 747 arbitration claim by April 30, 2010; (2) comply with certain space/premises requirements; (3) confirm its location for resumed operations; (4) establish and maintain $296,000 of net working capital; (5) obtain all applicable licenses to conduct Buick franchise operations; and (6) return its wind-down payments. New GM asked Family [*13] Auto to sign and return the Letter of Intent within 10 days of receipt. If Family Auto failed to do so, the Letter of Intent would be "deemed rescinded" and New GM would have "no further obligations." *Id.* at 39.

If Family Auto executed the Letter of Intent, it would have sixty days to satisfy the conditions set forth in the Letter:

> If [Family Auto] does not provide GM with satisfactory evidence of compliance with all of the terms and conditions of this Letter of Intent within 60 days from [the] execution of this letter, then this Letter of Intent will expire and GM shall have no obligation to execute the Wind-Down Amendment.

Id. at 37. If Family Auto satisfied the Letter's conditions, New GM offered to amend the existing Wind-Down Agreement within 15 days:

> Within 15 days of [Family Auto's] completion of the conditions and requirements of this Letter of Intent, GM will execute and deliver to [Family Auto] an amendment to the Wind-Down Agreement . . . , which will allow [Family Auto] to resume normal dealership operations for [the Buick] Brand(s).

Id. The Letter of Intent stated that it could "not be transferred or assigned, in whole or in part, without the express written consent of GM." [*14] *Id.* at 39.

According to New GM, it offered similar letters of intent to "hundreds" of dealers that had filed arbitration demands due to "the number of arbitrations pending, the short time permitted under the statute, the resources available to GM, the resources devoted to resolving a similar number of Chrysler arbitrations, and the limited number of witnesses available to attend the hearings[.]" New GM's Brief at 8. The Letter of Intent reflects that, on March 13, 2010, Polaco executed the Letter of Intent on Family Auto's behalf. [4]

4 The parties seem to dispute whether Family Auto ever executed the Letter of Intent. Plaintiffs contend that the Letter of Intent "expired because it was not timely accepted." Plaintiffs' Brief in Support of Motion for Preliminary and Permanent Injunction (docket no. 2-1) at 6. To support this assertion, Plaintiffs cite to a brief that New GM filed in the arbitration proceedings, in which New GM asserted that it "never received a response to the [Letter of Intent] and the [Letter of Intent] has since expired by its terms." Plaintiffs' Exhibit 11 (docket no. 2-2) at 42. New GM acknowledges making this statement, but asserts it was a mistake because, "[a]t [*15] the time of GM's filing [in the arbitration proceeding], counsel was unaware that the [Letter of Intent] had been returned." New GM's Brief at 8 n.2. New GM directs the court to Family Auto's response in the arbitration proceedings, in which Family Auto disputed New GM's position, stating it was "simply not true" that the Letter of Intent had expired. Exhibit 7 to Affidavit of J. Todd Kennard (docket no. 20-1) at 149. In the same filing, Joel Thys stated that "I have copies of the postal documentation that is proof that GM received the signed [Letter of Intent]." *Id.* Family Auto also stated that it had complied with many conditions set forth in the Letter of Intent and that it would comply with the remaining terms. The court also notes that Plaintiffs submitted a copy of the Letter of Intent as an exhibit in support of their Motion for Injunctive Relief. *See* docket no. 2-2 at 37-39. The Letter of Intent reflects that Edward Polaco executed it, on Family Auto's behalf, on March 13, 2010.

G. Arbitral Order

On June 17, 2010, Arbitrator Edward C. Stringer entered an order ("Arbitral Order") stating, in its entirety:

> 1. I have jurisdiction of this § 747 proceeding because
>
> a. Family Auto Center, [*16] Inc. is a covered dealer;
>
> b. Family Auto Center, Inc. filed a timely demand for arbitration; and
>
> c. I have acted within the time period described.

> 2. General Motors LLC submitted this Order which requests that I issue an Order continuing Family Auto Center, Inc. as a Buick dealer pursuant to the terms of § 747.
>
> WHEREFORE, IT IS THE ORDER OF THE ARBITRATOR that Family Auto Center, Inc. should be and hereby is continued.
>
> Having no other powers in this matter, this arbitration is now dismissed and this is a final order.

Plaintiffs' Exhibit 15 (docket no. 2-2) at 52.

The parties have different views about what led to the Arbitral Order and, unsurprisingly, its legal effect. According to Plaintiffs, the parties agreed to the Arbitral Order "in lieu of proceeding to try the case" through arbitration. Motion for Injunctive Relief at P 21. Plaintiffs contend that the Arbitral Order simply requires New GM to continue Family Auto's Buick franchise, and that New GM is "[i]gnoring" this directive. *Id.* at P 22.

New GM, on the other hand, provides this explanation:

> Given the fact that New GM had already offered a [Letter of Intent] to Family Auto, the parties simply submitted an agreed order to the Arbitrator [*17] authorizing continued operations "in accordance with § 747"--i.e., awarding Family Auto a letter of intent to seek reinstatement to New GM's dealer network under the terms and conditions of the [Letter of Intent]. In fact, Family Auto had *already received* and executed the [Letter of Intent] called for by § 747. Family Auto, however, never satisfied or otherwise complied with the Letter of Intent. As a Result of Family Auto's failure to comply with the Family Auto [Letter of Intent], the Wind-Down Agreement between [Old GM] and Family Auto--which was assumed and assigned to New GM under the Bankruptcy Court's orders--remains in effect as to Family Auto's Buick operations.

New GM's Brief at 9 (emphasis in original) (citations omitted).

H. Plaintiffs' Claims

In the instant action, Plaintiffs claim that New GM has ignored the Arbitral Order by refusing to continue Family Auto's Buick franchise and taking the position that the "wind-down process remains in effect with respect to the Buick franchise." Motion for Injunctive Relief at P 22. Plaintiffs also contend that New GM has "refused to give effect to the transfer of [Family Auto's] Buick franchise to Thys as required by the Iowa Motor Vehicle [*18] Franchise Act." *Id.* at P 23. Accordingly, Plaintiffs ask the court to "issue a permanent injunction enjoining GM to extend formal recognition of the change in ownership and the management and transfer of the Buick dealer franchise from Family [Auto] to Thys, and treat Thys, for all purposes, as the dealer owner and dealer operator on terms previously held by Family [Auto]." *Id.* at 9.

IV. ANALYSIS

New GM asks the court to dismiss the instant action pursuant to *Federal Rule of Civil Procedure 12(b)(1)* for lack of subject matter jurisdiction and/or *Rule 12(b)(3)* for improper venue. Alternatively, New GM asks the court to transfer this case to the Bankruptcy Court pursuant to *28 U.S.C. §§ 1412* and/or *1404*.

A. Bankruptcy Court's Jurisdiction

New GM contends that, in light of the Bankruptcy Court's reservation of exclusive jurisdiction and the Wind-Down Agreement's reservation of exclusive jurisdiction in the Bankruptcy court, "the Bankruptcy Court is the only forum with jurisdiction to proceed." New GM's Brief at 16. Plaintiffs contend that the Complaint alleges "three clear traditional and unchallengeable grounds for this [c]ourt's jurisdiction in this case." Plaintiffs' Brief at 3. Namely, [*19] federal question, diversity and supplemental jurisdiction. In addition, Plaintiffs argue that the Bankruptcy Court lacks jurisdiction over the instant action.

Although the Bankruptcy Court clearly reserved exclusive jurisdiction to enforce and implement its Sale Order and resolve disputes relating to the wind-down agreements, "bankruptcy courts are unable to expand their own jurisdiction by order." *U.S. Commodity Futures Trading Comm'n v. NRG Energy, Inc., 457 F.3d 776, 780 (8th Cir. 2006)*; *see also Binder v. Price Waterhouse & Co., LLP, (In re Resorts Int'l, Inc.) 372 F.3d 154, 161 (3d Cir. 2004)* ("[N]either the bankruptcy court nor the parties can write their own jurisdictional ticket."). In other words, the Bankruptcy Court's retention of jurisdiction is meaningless unless the Bankruptcy Court could exercise jurisdiction over the instant action in the first

place. Therefore, the court turns to consider whether the Bankruptcy Court has jurisdiction over Plaintiffs' claims.

1. Bankruptcy court jurisdiction

Bankruptcy courts "may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . ." *28 U.S.C. § 157(b)(1).* [*20] In these "core proceedings," the bankruptcy court may enter appropriate orders and judgments, subject to appellate review by the district court. *Id.* Although not core proceedings, bankruptcy courts also have jurisdiction to hear proceedings that are "otherwise related to a case under title 11." *28 U.S.C. § 157(c)(1).* In contrast to core proceedings, the bankruptcy court's role in "related to" proceedings is limited to submitting "proposed findings of fact and conclusions of law to the district court," which must enter any final order or judgment. *Id.*

As the foregoing explains, "[b]ankruptcy courts have jurisdiction over civil proceedings 'arising under,' 'arising in,' or 'related to' title 11." *GAF Holdings, LLC v. Rinaldi, (In re Farmland Indus., Inc.) 567 F.3d 1010, 1017 (8th Cir. 2009)* (quoting *28 U.S.C. § 157(b)(1), (c)(1)*). "'Civil proceedings in a bankruptcy case are divided into two categories, core proceedings and non-core, related proceedings.'" *Id.* (quoting *Specialty Mills, Inc. v. Citizens State Bank, 51 F.3d 770, 773 (8th Cir. 1995)).* "Core proceedings are those cases 'arising under' or 'arising in' a case under Title 11." *Id.* (quoting *28 U.S.C. § 157(b)(1)*). "Non-core 'related [*21] to' proceedings 'could conceivably have an effect on the estate being administered in bankruptcy.'" *Id.* (quoting *Specialty Mills, 51 F.3d at 774*).

"Claims 'arising under' Title 11 are 'those proceedings that involve a cause of action created or determined by a statutory provision of title 11.'" *Id. at 1018* (quoting *In re Wood, 825 F.2d 90, 96 (5th Cir. 1987)).* Claims "'arising in'" Title 11 "'are those that are not based on any right expressly created by title 11, but nonetheless, would have no existence outside of the bankruptcy.'" *Id.* (quoting *In re Wood, 825 F.2d at 97*). In other words, "'claims that arise in a bankruptcy case are claims that by their nature, not their particular factual circumstance, could only arise in the context of a bankruptcy case.'" *Id.* (quoting *Stoe v. Flaherty, 436 F.3d 209, 218 (3d Cir. 2006)).*

With respect to "related to" jurisdiction, the Eighth Circuit Court of Appeals applies the "conceivable effect" test, which provides that a civil proceeding is "related to" bankruptcy where "'the outcome of that proceeding could *conceivably have any effect on the estate* being administered in the bankruptcy . . . .'" *Id. at 1019* (quoting *Specialty Mills, 51 F.3d at 774*) [*22] (emphasis in *Farmland Indus.*). Thus, "'[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankruptcy estate.'" *Id.* "Related to" proceedings include actions between third parties which have an effect on the bankruptcy estate. *Id.* (quoting *Celotex Corp. v. Edwards, 514 U.S. 300, 307 n.5, 115 S. Ct. 1493, 131 L. Ed. 2d 403 (1995)).* "The conceivable effect test implements a fairly broad interpretation of the scope of a bankruptcy court's 'related to' jurisdiction . . . ." *Abramowitz v. Palmer, 999 F.2d 1274, 1277 (8th Cir. 1993)*; *see also Farmland Indus., 567 F.3d at 1019* (describing jurisdictional grant as "extremely broad").

2. Analysis

New GM argues that the Bankruptcy Court has jurisdiction under all three doctrines--arising under, arising in and related to. Unsurprisingly, Plaintiffs contend that the Bankruptcy Court lacks jurisdiction under any theory. The court need only consider whether Plaintiffs' claims are at least related to the bankruptcy proceedings. *See Wood, 825 F.2d at 93* ("For the purpose of determining whether a particular matter falls within bankruptcy [*23] jurisdiction, it is not necessary to distinguish between proceedings 'arising under', 'arising in a case under', or 'related to a case under', title 11. These references operate conjunctively to define the scope of jurisdiction. Therefore, it is necessary only to determine whether a matter is at least 'related to' the bankruptcy."); *see also Dogpatch Props., Inc. v. Dogpatch U.S.A., Inc., (In re Dogpatch U.S.A., Inc.) 810 F.2d 782, 785-786 (8th Cir. 1987)* (noting that, although the parties likely consented to bankruptcy court's jurisdiction and the plaintiffs' claims were likely core proceedings, the court "need not rely" on either theory "because the bankruptcy court properly held that [the claims] were related to a case under chapter 11 and thus were within the jurisdiction of the bankruptcy court"). For the reasons explained below, the Bankruptcy Court has jurisdiction over the instant action.

a. Related to jurisdiction

Here, Plaintiffs' claims are related to the bankruptcy because the relief they seek--a permanent injunction directing New GM to extend "formal recognition" to the transfer of ownership from Family Auto to Thys Chevrolet--runs contrary to the Wind-Down Agreement, which [*24] the Bankruptcy Court approved in its Sale Order. Motion for Injunctive Relief at 9. In the Wind-Down Agreement, Family Auto agreed that it would not propose or consummate a change in ownership or transfer the assets of its dealership. In the instant action, Plaintiffs ask the court to give effect to just that: a transfer of its

assets to Thys Chevrolet. The Bankruptcy Court approved of Old GM's wind-down agreements with many dealers, including Family Auto, and ordered that the 363 Acquirer take the purchased assets--including the wind-down agreements--"free and clear" of all "liens, claims, encumbrances, and other interests (other than Permitted Encumbrances) . . . ." New GM's Exhibit B at 14. Because the relief that Plaintiffs seek could impact the handling and administration of the bankruptcy estate--by altering New GM's obligations with respect to the assets sold in the bankruptcy--Plaintiffs' claims could conceivably have an effect on the bankruptcy estate. *See Farmland Indus., 567 F.3d at 1019* (stating that the court must determine whether the plaintiff's claims "could conceivably have an effect" on the bankruptcy estate). Accordingly, the Bankruptcy Court has, at minimum, related [*25] to jurisdiction over Plaintiffs' claims.

Plaintiffs arguments against related to jurisdiction are unpersuasive. The fact that New GM is not the bankruptcy debtor is of no consequence, because "related to" actions include those "'between third parties which have an effect on the bankruptcy estate.'" *Id.* (quoting *Celotex Corp., 514 U.S. at 307 n.5*). Plaintiffs also speculate that, because Congress has been an "advocate and savior" to Old and New GM, "[i]t is unlikely and illogical that Congress, the group which saved New GM from bankruptcy through billions of dollars in TARP funds, would [enact] a law like § 747 if it altered Old GM's rights, liabilities, options, or freedom of action in the handling of the estate's administration." Plaintiffs' Supp. Brief at 4 n.2. In addition to again overlooking the fact that related to jurisdiction extends to suits between third parties if they could conceivably affect the bankruptcy *estate* (not just the debtor), Plaintiffs cite no authority for this proposition and the court gives it no weight. [5]

> 5 Plaintiffs also characterize § 747 as representing "Congress' [*26] specific intent to reverse the Bankruptcy Court order of massive terminations of auto dealerships[.]" Plaintiffs' Brief at 5; *see also* Plaintiffs' Supp. Brief at 5 (stating that § 747 "overruled" the Bankruptcy Court's orders). However, the plain language of the statute makes clear it was not intended to "reverse" or "overrule" any wind-down agreements or any of the Bankruptcy Court's orders. Rather, it merely provided certain dealers with a forum and opportunity to seek reinstatement or continuation based upon the arbitrator's consideration of numerous factors and interests.

b. Core proceeding

While it need not reach the issue, the court notes that, in addition to being "related to" the bankruptcy, this case constitutes a core proceeding. In its Sale Order, the Bankruptcy Court expressly retained "exclusive jurisdiction to enforce and implement the terms and provisions" of its Sale Order, the wind-down agreements, and to "resolve any disputes with respect to or concerning the Deferred Termination Agreements [6] . . . ." New GM's Exhibit B at 49. As the United States Supreme Court recently explained, "the Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior [*27] orders." *Travelers Indem. Co. v. Bailey, 129 S.Ct. 2195, 2205, 174 L. Ed. 2d 99 (2009)* (noting that, "when the Bankruptcy Court issued [its prior orders,] it explicitly retained jurisdiction" to enforce them); *see also United Taconite, L.L.C. v. Minnesota, (In re Eveleth Mines, L.L.C.) 318 B.R. 682, 687 (B.A.P. 8th Cir. 2004)* (noting that there is "ample precedent" for the proposition that "since the [bankruptcy] court had jurisdiction to enter the Sale Order, it must also have jurisdiction to interpret and enforce that order").

> 6 As previously noted, the Bankruptcy Court defined "Deferred Termination Agreements" to include the wind-down agreements.

Because Plaintiffs' claims appear contrary to the Wind-Down Agreement and the Bankruptcy Court's Sale Order approving such agreements, they certainly fall within the Bankruptcy Court's reservation of jurisdiction to enforce and implement its Sale Order and, more specifically, resolve disputes "with respect to or concerning" the wind-down agreements. In other words, Plaintiffs' claims turn, at least in part, on the interpretation and enforcement of the Bankruptcy Court's orders.

"[O]rders approving the sale of property" are core proceedings. *28 U.S.C. § 157(b)(2)(N).* [*28] Therefore, courts generally treat as a core proceeding any action that depends on an interpretation or enforcement of the bankruptcy court's sale orders. *See In re Millenium Seacarriers, Inc., 458 F.3d 92, 95 (2d Cir. 2006)* ("Orders approving the sale of property constitute core proceedings and the [lawsuit at issue], which turns on the terms of the Sale Order, amounts to a request that the bankruptcy court enforce that order. We therefore deem the [lawsuit] a core proceeding and conclude that the bankruptcy court's initial decision to exercise jurisdiction over that action was not error.") (internal citation and quotation marks omitted); *In re Allegheny Health Educ. and Research Found., 383 F.3d 169, 176 (3d Cir. 2004)* ("[W]e hold that the bankruptcy court correctly determined that the suit was a core proceeding because it required the court to interpret and give effect to its previous sale orders."); *In re Eveleth Mines, LLC, 312 B.R. 634, 644-45 (Bankr. D. Minn. 2004)* (observing that "'the enforcement of orders resulting from core proceedings'" is itself a core

proceeding) (quoting *In re Williams, 256 B.R. 885, 892 (8th Cir. B.A.P. 2001))*.

Applying this principle here, the court [*29] concludes that the instant action constitutes a core proceeding within the Bankruptcy Court's jurisdiction. Plaintiffs attempt to sever their claims here from the bankruptcy by portraying the instant action as being heavily predominated by § 747. *See* Plaintiffs' Brief at 8 (stating that Bankruptcy Court lacks jurisdiction because Plaintiffs' claims "are based wholly upon the ruling of the arbitrator acting under section 747 authority and Section 322A of the Iowa Code"). However, Plaintiffs' view of the case ignores the fact that § 747 and, more importantly, the relief they seek in this case, is inextricably intertwined with the bankruptcy for a variety of reasons. Plaintiffs seek a permanent injunction directing New GM to recognize the transfer of ownership from Family Auto to Thys. The court agrees with New GM that the gravamen of this case is the propriety of the claimed transfer from Family Auto to Thys, which "goes to the very heart of the bankruptcy case . . . ." New GM's Brief at 16-17. Simply put, Plaintiffs ask the court to order New GM to take action that appears to be at odds with both the Wind-Down Agreement and the Bankruptcy Court's Sale Order. Because a resolution of [*30] Plaintiffs' claims will turn on the interpretation and enforcement of the Bankruptcy Court's Sale Order, the court concludes that the instant action is a core proceeding.

B. Dismissal or Transfer

New GM asks the court to dismiss the instant action without prejudice, noting that Plaintiffs can then bring their claims in the Bankruptcy Court. Alternatively, New GM asks the court to transfer this case to the Bankruptcy Court. For the reasons explained below, the court finds that transfer is appropriate.

1. Sections 1412 and 1404

"A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." *28 U.S.C. § 1412*. Similarly, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." *28 U.S.C. § 1404(a)*. There is some confusion among federal courts as to when either statute is applicable. *See Oil Tool Rentals, Co. v. SH Exploration, LLC, No. 4:10CV00324 SWW, 2010 U.S. Dist. LEXIS 86625, 2010 WL 2949673, at *1 n.2 (E.D. Ark. July 22, 2010)* (noting that some courts hold that *§ 1404* applies [*31] to cases that are "only 'related to' a bankruptcy case as opposed to proceedings arising in or under a bankruptcy case"); *Creekridge Capital, LLC v. Louisiana Hosp. Ctr., LLC, 410 B.R. 623, 628 (D. Minn. 2009)* (detailing split of authority and concluding that *§ 1412* also applies to actions "related to a bankruptcy proceeding in another forum"). At least two district courts in the Eighth Circuit have held that *§ 1412* also governs the transfer of "related to" actions. *See Creekridge Capital, 410 B.R. at 628*; *Quick v. Viziqor Solutions, Inc., No. 4:06CV637SNL, 2007 U.S. Dist. LEXIS 10009, 2007 WL 494924, at *3 (E.D. Mo. Feb. 12, 2007)*. Accordingly, the court shall apply *§ 1412* in its transfer analysis. [7]

> 7 The court notes that the statutes are virtually identical and the court would transfer the instant action under either statute. *See* 15 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3843 at 245 (3d ed. 2007) ("[C]ourts have held that *[§ 1412*] requires essentially the same analysis and turns on the same issues as the transfer of civil actions under *Section 1404(a)*.")

2. Transfer analysis

Transfer under *§ 1412* is discretionary. *Creekridge Capital, 410 B.R. at 629*; *see also Terra Int'l, Inc. v. Miss. Chem. Corp., 119 F.3d 688, 697 (8th Cir. 1997)* [*32] (stating that district courts possess "much discretion" in deciding whether to transfer a case under *§ 1404*). As the party moving for transfer, New GM has the burden to show by a preponderance of the evidence that transfer is warranted. *Creekridge Capital, 410 B.R. at 629*.

a. Interest of justice

In *Creekridge Capital*, the court identified the factors most courts consider under *§ 1412*'s "interest of justice" prong:

> (1) the economical and efficient administration of the bankruptcy estate, (2) the presumption in favor of the forum where the bankruptcy case is pending, (3) judicial efficiency,
>
> (4) the ability to receive a fair trial, (5) the state's interest in having local controversies decided within its borders by those familiar with its laws, (6) the enforceability of any judgment rendered, and (7) the plaintiff's original choice of forum.

410 B.R. at 629 (citing *In re Bruno's, Inc., 227 B.R. 311, 324-25 nn. 45-51 (Bankr. N.D. Ala. 1998)*).

The court finds that several of these factors weigh in favor of transfer. Transfer to the Bankruptcy Court will promote the economical and efficient administration of the bankruptcy because the Wind-Down Agreement and the Bankruptcy Court's orders will [*33] undoubtedly play a central role in this litigation. It stands to reason that the court responsible for these orders is better positioned to interpret and enforce them. Presumably, that is why the Bankruptcy Court retained exclusive jurisdiction to do so.

Transfer will also promote judicial efficiency because of the Bankruptcy Court's relative familiarity with the issues Plaintiffs raise in this action. The core of Plaintiffs' claims is the Wind-Down Agreement. In its Sale Order, the Bankruptcy Court specifically approved of such agreements, finding them to be "valid and binding contracts, enforceable in accordance with their terms." New GM's Exhibit B at 35. The court also agrees with New GM that "[t]he Bankruptcy Court has already advanced along a substantial 'learning curve' with respect to the Wind-Down Agreements." New GM's Brief at 19. The Bankruptcy Court's relative familiarity with the wind-down agreements and all related issues weighs in favor transfer. *Cf. Gulf States Exploration Co. v. Manville Forest Products Corp. (In re Manville Forest Prods. Corp.), 896 F.2d 1384, 1391 (2d Cir. 1990)* (affirming denial of transfer under *§ 1412*, in part because "the bankruptcy court had [*34] developed a substantial 'learning curve' and . . . transferring venue would have delayed the final resolution of the bankruptcy case").

There is also "a strong presumption in favor of placing venue in the district court where the bankruptcy case is pending." *Quick, 2007 U.S. Dist. LEXIS 10009, 2007 WL 494924, at *3*. Plaintiffs concede that this so-called "home court" presumption weighs in favor of transfer. *See* Plaintiffs' Supp. Brief at 4 ("Other than favorability of the home court, there is absolutely no reason why transferring this matter is in the 'interest of justice.'"). While this factor is less important where the debtor is a non-movant in the motion to transfer venue, *Quick, 2007 U.S. Dist. LEXIS 10009, 2007 WL 494924, at *3*, the court finds that it is entitled to some weight in favor of transfer.

Other factors are largely irrelevant or, if relevant, appear neutral. Neither side suggests they could not receive a fair trial in the Bankruptcy Court or that they would face difficulties in enforcing a judgment. The court's familiarity with local controversies and laws is of minimal importance here, as this case centers primarily on bankruptcy issues and § 747. Plaintiffs contend that this court's familiarity with Iowa law on issues of "dealership [*35] franchise law" make this forum more fair and efficient. Plaintiffs' Supp. Brief at 5. However, to the extent Plaintiffs' claims implicate Iowa law, [8] the Bankruptcy Court confronted similar statutes from a variety of jurisdictions in connection with the wind-down agreements and could do so in this case.

> 8 Plaintiffs claim that New GM has failed to comply with *Iowa Code Section 322A.12*, which governs a franchiser's duty to give effect to a transfer of a franchisee's dealership. The court notes that the Bankruptcy Court found similar statutes to be "trumped" by federal bankruptcy law. *See* New GM's Exhibit A (docket no. 7-2) at 90 (holding that state laws that "impair the ability to reject, or to assume and assign" contracts "must be trumped by federal bankruptcy law").

The only factor that arguably weighs against transfer is the deference ordinarily owed to Plaintiffs' choice of forum. However, this factor is entitled to less weight when "the transaction or underlying facts did not occur in the chosen forum." *Nelson v. Soo Line R.R. Co., 58 F. Supp. 2d 1023, 1026 (D. Minn. 1999)* (considering transfer under *§ 1404(a)*) (internal citation omitted). While some underlying facts--such as the purported [*36] transfer from Family Auto to Joel Thys--occurred in this forum, other important transactions, including the Wind-Down Agreement and the Bankruptcy Court's Sale Order originate in the Southern District of New York. Regardless, on balance, the factors discussed above strongly outweigh Plaintiffs' choice of forum. Accordingly, the court finds that transferring this case to the Bankruptcy Court would be in the interest of justice.

b. Convenience of the parties

Section 1412 is stated in the disjunctive. Thus, a court may transfer a case "under *either* the interest of justice rationale or the convenience of the parties rationale." *In re Dunmore Home, Inc., 380 B.R. 663, 670 (Bankr. S.D.N.Y. 2008)* (emphasis in original); *Creekridge Capital, 410 B.R. at 629* (noting disjunctive phrasing and stating that *§ 1412* transfer is appropriate upon a sufficient showing under either prong). In light of the court's conclusion that transfer serves the interest of justice, it need not address the convenience of the parties.

C. Plaintiffs' Other Arguments

Plaintiffs raise a host of other arguments against the Bankruptcy Court's jurisdiction and/or transfer of the instant action. The court addresses each of them [*37] here.

1. Adhesion contract or economic duress

Plaintiffs contend that the Wind-Down Agreement is a voidable contract of adhesion. Similarly, Plaintiffs claim the Wind-Down Agreement is voidable due to

economic duress. The Bankruptcy Court considered and rejected similar arguments in the course of approving the wind-down agreements. *See* New GM's Exhibit A at 90 ("There is no basis in law or fact for holding these contractual modifications were unlawfully 'coerced.'"). The Bankruptcy Court reasoned that similar contract modifications with bankruptcy debtors have "never been regarded as unlawful coercion." *Id.* at 89. "Rather, it has been recognized as an appropriate use of the leverage that Congress has given to debtors for the benefit of all of the other creditors who are not contract counterparties, and for whom the restructuring of contractual arrangements is important to any corporate restructuring." *Id.* The court need not address the merits of these arguments, as the Bankruptcy Court is fully capable of doing so upon transfer. [9]

> 9 While the court notes the Wind-Down Agreement's forum selection clause, it does not rely on that provision as a basis for transferring this case. The court [*38] finds that transfer is appropriate based on the factors discussed in Section IV.B, *supra*, independent of the forum selection clause.

2. Estoppel

Plaintiffs argue that New GM is estopped from claiming that Plaintiffs are bound by the Wind-Down Agreement. The gist of this argument is that when New GM agreed to the Arbitral Order, it "waived any rights to rely on provisions of the Wind-Down Agreement" because "[t]wo authorities in direct conflict with one another cannot logically exist--one must give way." Plaintiffs' Brief at 13. Plaintiffs cite no authority in support of this argument. Additionally, this argument presupposes that the Wind-Down Agreement and Arbitral Order are in direct conflict, an issue the Bankruptcy Court will likely confront as part of this case. Accordingly, the court need not address it here.

3. Withdrawal

Plaintiffs contend that, if the court referred this case to the Bankruptcy court, it would be mandatory for the district court to withdraw it. Withdrawal is governed by *28 U.S.C. § 157(d)*, which states, in part: "The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration [*39] of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." The court agrees with New GM that this issue is not ripe, as Plaintiffs have not filed a motion to withdraw, either in this court or in the Southern District of New York. The appropriate court may address this issue if and when Plaintiffs raise it. [10]

> 10 Plaintiffs argue that withdrawal would be mandatory here because "only non- [bankruptcy] [c]ode matters are at issue" and the claim for enforcement of the Arbitral Order "dominates" this action. Plaintiffs' Brief at 12. As previously stated, Plaintiffs' claims in this case are inextricably intertwined with the Wind-Down Agreement and the Bankruptcy Court's orders. Furthermore, courts take a narrow view of the mandatory withdrawal statute, holding that "[w]ithdrawal is mandated only where the issues presented require significant interpretation of federal laws." *Wittes v. Interco Inc., 137 B.R. 328, 329 (E.D. Mo. 1992)* (internal quotation marks and citation omitted). [A] literal reading of the statute 'would eviscerate much of the work of the bankruptcy courts' . . . ." *Id.* (quoting *O'Connell v. Terranova (In re Adelphi Inst., Inc.), 112 B.R. 534, 536 (S.D.N.Y. 1990))*.

4. [*40] ***Judicial estoppel***

At the Hearing, Plaintiffs argued that the doctrine of judicial estoppel may bar New GM from contesting the issue of jurisdiction. Specifically, Plaintiffs contend that New GM has taken an inconsistent position in *General Motors LLC v. Santa Montica Group, Inc., et al.*, Case No 10-CV-4784-DMG-RC (C.D. Cal. 2010) ("California Action"). *See* New GM's Complaint in California Action (docket no. 29-1). In the California Action, New GM argued that the district court had federal question jurisdiction because its claims arose under § 747. New GM also asserted diversity jurisdiction.

Plaintiffs' argument for judicial estoppel is unconvincing. In the California Action, New GM alleged that the defendant breached a settlement agreement reached during a § 747 arbitration by later refusing to dismiss the arbitration proceedings. Accordingly, New GM brought claims for a declaratory judgment, specific performance and injunctive relief. "The doctrine of judicial estoppel 'protects the integrity of the judicial process.'" *Stallings v. Hussmann Corp., 447 F.3d 1041, 1047 (8th Cir. 2006)* (quoting *Total Petroleum, Inc. v. Davis, 822 F.2d 734, 738 n.6 (8th Cir. 1987))*. In deciding whether [*41] to apply the doctrine, a court should consider at least three factors, the first of which requires that "'a party's later position must be clearly inconsistent with its earlier position.'" *Id.* (quoting *New Hampshire v. Maine, 532 U.S. 742, 750, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001))*. New GM's position in this case is not clearly inconsistent with its position in the California Action, which did not involve potential breaches of a wind-down agreement or the Bankruptcy Court's orders. Simply put, the cases are

not comparable. Accordingly, the court declines to apply judicial estoppel.

5. Summary

As the foregoing explains, Plaintiffs' additional arguments lack merit and do not alter the court's conclusion with respect to the Bankruptcy Court's jurisdiction or the appropriateness of transferring this case. Accordingly, the court shall transfer the instant action to the Bankruptcy Court.

V. CONCLUSION

In light of the foregoing, it is **HEREBY ORDERED THAT** Defendant General Motors LLC's Motion to Dismiss (docket no. 12) is **GRANTED IN PART** and **DENIED IN PART** as follows:

> (1) The Motion to Dismiss is **DENIED** to the extent it seeks dismissal of the instant action;
>
> (2) The Motion to Dismiss is **GRANTED** to the extent it seeks transfer [*42] of the instant action to the United States District Court for the Southern District of New York; and
>
> (3) This action shall be **TRANSFERRED** to the United States District Court for the Southern District of New York for reference to the Bankruptcy Court.

Defendant General Motors LLC's Motion for Leave (docket no. 34) is **DENIED AS MOOT.** Upon transfer, the Clerk of Court is **DIRECTED** to **CLOSE THIS CASE.**

IT IS SO ORDERED.

DATED this 12th day of October, 2010.

/s/ Linda R. Reade

LINDA R. READE

CHIEF JUDGE, U.S. DISTRICT COURT

NORTHERN DISTRICT OF IOWA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 10-2683 AHM (VBKx)	Date	December 15, 2010
Title	RODOLFO FIDEL MENDOZA v. GENERAL MOTORS, LLC		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE	
Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys **NOT** Present for Plaintiffs: Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

This case is before the court on defendant General Motors, LLC's ("New GM") motion to dismiss plaintiff Rodolfo Fidel Mendoza's ("Plaintiff") First Amended Complaint ("FAC") for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) or, in the alternative, to transfer this case under 28 U.S.C. section 1412 to the Southern District of New York for referral to the bankruptcy court. For the reasons set forth below, the Court GRANTS New GM's motion to transfer.[1]

I. INTRODUCTION

In July 2009, New GM acquired certain assets of General Motors Corporation ("Old GM") through an Amended and Restated Master Sale and Purchase Agreement ("Agreement") as part of Old GM's bankruptcy proceedings, attached as Exhibit 1 to Plaintiff's Request for Judicial Notice ("RJN").[2] FAC ¶ 2. The United States Bankruptcy Court for the Southern District of New York approved the Agreement in an order issued on July 5, 2009 ("Order"), attached as Exhibit 2 to Plaintiff's RJN. Per the terms of the Agreement and Order, New GM did not assume Old GM's liabilities, other than as specified in the "Assumed Liabilities" section of the Agreement. Agreement § 2.3.

[1]Docket No. 15.

[2]The Court takes judicial notice of the Amended and Restated Master Sale and Purchase Agreement and the Bankruptcy Court's Sale Approval Order.

On April 13, 2010, Plaintiff filed a putative class action in this Court naming New GM as a defendant. On July 15, 2010, Plaintiff filed the FAC, alleging one cause of action under the California Consumer Legal Remedies Act and two causes of action under the California Unfair Business Practices Act. Plaintiff's claims are based on New GM's alleged failure to disclose a water leak defect in Chevrolet Equinox and Pontiac Torrent sport utility vehicles manufactured by or for Old GM from 2005 through 2009. FAC ¶¶ 1, 3, 42. New GM asserts Plaintiffs claims are barred because the Agreement, as enforced by the Order, specifically excluded its assumption of the statutory liabilities asserted by Plaintiff. Memorandum of Points and Authorities in Support of Motion ("MPA in Support"). Not surprisingly, Plaintiff interprets its claims differently and contends that New GM did indeed assume the liabilities at issue. Plaintiff's Opposition ("Opp.") p. 4.

The bankruptcy court's Order approving the Agreement states:

> This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, [and] the [Agreement] . . . in all respects, including, but not limited to, retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the [Agreement] . . . (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 . . . .

Order ¶ 71.

Based on this language in the Order, New GM argues that "[w]hether this action may proceed against New GM based on the claims plaintiff has attempted to plead in the First Amended Complaint therefore is a question which only the New York Bankruptcy Court has jurisdiction to decide." MPA in Support p. 13. According to New GM, this Court must either dismiss the case entirely for lack of subject matter jurisdiction or transfer it to the Southern District of New York for referral to the Bankruptcy Court. Plaintiff disputes this, arguing "[t]hat [New] GM may interpret provisions of its agreement to assume liabilities differently that [sic] Plaintiff does not invoke the

bankruptcy court's jurisdiction." Opp. p. 4.

Determining if Plaintiff's claims against New GM are barred requires interpreting and applying the Agreement. The question before this Court is whether that determination is properly within the scope of the bankruptcy court's subject matter jurisdiction.

II. ANALYSIS

A. Scope of Bankruptcy Jurisdiction

"Federal district courts have exclusive jurisdiction over all cases under Title 11 of the United States Code, and concurrent jurisdiction over all civil proceedings arising under Title 11, or arising in or related to cases under Title 11." *Maitland v. Mitchell (In re Harris Pine Mills*), 44 F.3d 1431, 1434 (9th Cir. 1995). The district court may refer to the bankruptcy court "all proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 157(a); *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1193 (9th Cir. 2005) (bankruptcy court has jurisdiction over these proceedings).

Cases "arising under Title 11" are "those proceedings that involve a cause of action created or determined by a statutory provision of title 11 . . . ." *In re Harris*, 44 F.3d at 1435 (quoting *Wood v. Wood (In re Wood*), 825 F.2d 90, 96-97 (5th Cir. 1987)). In contrast, "'[a]rising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." *Id.* Finally, a proceeding is "related to" a bankruptcy case if "*the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy*. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property." *In re Pegasus*, 394 F.3d at 1193 (quoting *Fietz v. Great Western Savings (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988) (adopting the "*Pacor* test")).

Proceedings that "arise under" Title 11 or "arise in" cases under Title 11 are "core" bankruptcy matters, and a bankruptcy judge may hear such proceedings and enter final orders and judgments, which may be appealed to the district court. 28 U.S.C. § 157(b)(1). "Related to" proceedings are "non-core" matters, and a bankruptcy judge

"may not enter final judgments without the consent of the parties, and its findings of fact and conclusions of law in noncore [sic] matters are subject to de novo review by the district court . . . ." *In re Harris*, 44 F.3d at 1436 (quoting *Taxel v. Electronic Sports Research (In re Cinematronics*), 916 F.2d 1444, 1449 (9th Cir. 1990)); 28 U.S.C. § 157(c)(1).

Plaintiff misunderstands this distinction between "core" and "non-core" matters. He claims that if his case is a proceeding merely "related to" a bankruptcy case, *i.e.*, a "non-core" matter, then the bankruptcy court lacks jurisdiction because Plaintiff demands a jury trial and does not consent to the bankruptcy court entering a final judgment. Opp. p. 21 n.18. To the contrary, even if Plaintiff's case is a "non-core" matter, the bankruptcy court has jurisdiction over pretrial proceedings and may enter interlocutory orders regardless of whether the parties consent. *Sigma Micro Corp. v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775, 787-88 (9th Cir. 2007) ("A valid right to a Seventh Amendment jury trial in the district court does not mean the bankruptcy court must instantly give up jurisdiction and that the action must be transferred to the district court. Instead, we hold, the bankruptcy court may retain jurisdiction over the action for pre-trial matters.").

Here, the Court need only determine whether Plaintiff's case is at least "related to" a case under Title 11:

> For the purpose of determining whether a particular matter falls within bankruptcy jurisdiction, it is not necessary to distinguish between proceedings 'arising under', 'arising in a case under', or 'related to a case under', title 11. These references operate conjunctively to define the scope of jurisdiction. Therefore, it is necessary only to determine whether a matter is at least 'related to' the bankruptcy.

In re Wood, 825 F.2d at 93 (finding matter was not "core" proceeding, but was "related to" pending bankruptcy case).

B. Plaintiff's Case Is "Related To" the Old GM Bankruptcy Case [3]

The core of the parties' disagreement is whether New GM assumed liability for Plaintiff's claims under the terms of the Agreement to purchase assets and assume certain liabilities of Old GM. By its very nature, Plaintiff's case could at least "conceivably" have an effect on the estate being administered in bankruptcy. If Plaintiff prevails on the issue of whether New GM assumed liability for his claims (and those of the putative class), then the Agreement will have been interpreted so as to expand New GM's liability. In the alternative, if New GM prevails, then Old GM would remain liable for Plaintiff's claims. Thus, Plaintiff's case is at least "related to" the Old GM bankruptcy case and the bankruptcy court has subject matter jurisdiction. This finding is consistent with the bankruptcy court's express retention of jurisdiction to enforce and implement the terms and provisions of the Order and the Agreement, to interpret, implement, and enforce the Order, and to protect New GM against retained liabilities or claims against the purchased assets. Order ¶ 71.

There are also sound policy reasons – including judicial economy, consistency, and fairness to litigants – for finding that Plaintiff's case falls within the bankruptcy court's subject matter jurisdiction. Plaintiff's proposed class is limited to citizens of California, but the GM cars at issue were sold throughout the United States. Identical lawsuits can, and likely will, be filed in other states. Each of these lawsuits, and other lawsuits raising similar claims, will require a determination as to whether New GM assumed the liabilities at issue when it purchased Old GM's assets. Unless such actions are transferred to the bankruptcy court, different district courts will be required to interpret the same Agreement, and decide the same dispositive question, perhaps with different results. That would be an inefficient and, more importantly, unjust outcome.

The bulk of Plaintiff's opposition is devoted to arguing this case is not a "core" proceeding because it neither arises under Title 11 nor arises in a case under Title 11. This "core" proceeding argument is irrelevant because Plaintiff's case is at least "related to" the Old GM bankruptcy. Therefore, the bankruptcy court has subject matter

[3]Plaintiff hardly addresses the issue of whether his case is "related to" a case under Title 11, stating only that "it is not . . . ." Opp. p. 21.

jurisdiction.[4] *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 266 (3rd Cir. 1991) ("Whether a particular proceeding is core represents a question wholly separate from that of subject-matter jurisdiction.").

Having established that the bankruptcy court has subject matter jurisdiction, the bankruptcy court itself can enter an interlocutory order regarding whether the proceeding is core or non-core. 28 U.S.C. § 157(b)(3).

C. Plaintiff's Case Should Be Transferred to the Southern District of New York For Referral to the Bankruptcy Court

New GM moves the Court to dismiss Plaintiff's case entirely (presumably to allow Plaintiff to refile in bankruptcy court) or, in the alternative, to transfer the case under 28 U.S.C. section 1412 to the Southern District of New York for referral to the bankruptcy court. Dismissing the case entirely will entail unnecessary work and consumption of time by the parties that would be avoided by transferring the case.

Under 28 U.S.C. section 1412, a district court "may transfer a case or proceeding under Title 11 to a district court for another district in the interest of justice or for the convenience of the parties." In the preceding section this Court held that Plaintiff's action is a "related to" proceeding but did not reach the issue of whether it "arises under" Title 11 or "arises in" a case under Title 11. Courts are split on the issue of whether a "related to" proceeding may be transferred under 28 U.S.C. § 1412 or whether it must be transferred under 28 U.S.C. § 1404. Section 1404 provides, "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil

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[4]Although the Court need not reach the issue, "core" proceedings include "orders approving the sale of property" (28 U.S.C. § 157(b)(2)(N)) such as the Order entered by the bankruptcy court in the Old GM case, and a number of courts have held that cases requiring the interpretation or application of a bankruptcy court's orders are also "core" proceedings. *E.g., Beneficial Trust Deeds v. Franklin (In re Franklin)*, 802 F.2d 324, 326 (9th Cir. 1986) (The bankruptcy court had jurisdiction to determine the validity of a foreclosure sale because, "[s]imply put, bankruptcy courts must retain jurisdiction to construe their own orders if they are to be capable of monitoring whether those orders are ultimately executed in the intended manner.")

action to any other district or division where it might have been brought." It appears that the Ninth Circuit Court of Appeals has not ruled on the issue, and district courts in the Ninth Circuit have transferred "related to" proceedings under both statutes. *Compare Doss v. Chrysler*, 2009 WL 4730932, *5 (D.Ariz. December 7, 2009) ("[T]he present case is 'related to' a Title 11 proceeding, but the Court has not held it arises under Title 11. . . . [T]he Court has found no authority indicating how the Ninth Circuit would interpret 28 U.S.C. § 1412, [and] the Court will not transfer the case under that statute. The Court will, however, transfer this matter *sua sponte* under 28 U.S.C. § 1404."), *with Senorx, Inc. v. Coudert Bros., LLP*, 2007 WL 2470125, * 1 (N.D. Cal. August 27, 2007) (Citing to a Northern District of Alabama bankruptcy case for the proposition that "28 U.S.C. § 1412 is used to analyze the request for a change of venue in a proceeding related to a bankruptcy case.").

The Court will analyze the transfer under section 1412 because that statute refers specifically to bankruptcy cases, and applying section 1412 appears to be the sounder approach.[5] *See Creekridge Capital, LLC v. Louisiana Hosp. Center, LLC*, 410 B.R. 623, 628-29 (D.Minn. 2009) (engaging in extensive analysis and review of authorities from various circuits and concluding that section 1412 applies to transfers of "related to" proceedings). "The party moving for a transfer has the burden to show by a preponderance of the evidence that transfer is warranted." *Id.* at 629. The factors to be considered in analyzing whether a transfer would be in the interest of justice include:

> (1) the economical and efficient administration of the bankruptcy estate, (2) the presumption in favor of the forum where the bankruptcy case is pending, (3) judicial efficiency; (4) the ability to receive a fair trial, (5) the state's interest in having local controversies decided within its borders by those familiar with its laws, (6) the enforceability of any judgment rendered, and (7) the plaintiff's original choice of forum.

Id. (citing *A.B. Real Estate, Inc. v. Bruno's Inc. (In re Bruno's, Inc.)*, 227 B.R. 311, 324 nn.45-51 (Bkrtcy.N.D.Ala. 1998) (collecting cases in support of each factor)).

[5]Given the substantial overlap of analysis under the two statutes, the question is largely academic, and the Court would reach the same conclusion under section 1404.

The underlying bankruptcy case is venued in the Southern District of New York, so factors one, two, and three weigh in favor of transfer to that district. There is no question that Plaintiff will receive a fair trial in New York and will be able to enforce any judgment he might obtain, so factors four and six favor transfer. Remaining are the state's interest in having local controversies decided within its borders by those familiar with its laws and the plaintiff's original choice of forum. Plaintiff seeks to apply California law and chose California as his forum, but a bankruptcy court in New York is perfectly capable of interpreting and applying California law, and Plaintiff's choice of forum is heavily outweighed by the other factors. To hold otherwise would be to invite similar litigation throughout the country, with possibly inconsistent outcomes depending on how a particular court interprets the terms of the Agreement and Order as they relate to New GM's assumed liabilities.

III. CONCLUSION

Based on the foregoing, the Court GRANTS New GM's motion to transfer this action to the Southern District of New York for referral to the bankruptcy court.

No hearing is necessary. Fed. R. Civ. P. 78; L.R. 7-15.

JS-6

_____ : _____

Initials of Preparer SMO

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

TERRY NAFISI
District Court Executive and
Clerk of Court

To: Clerk, United States District Court
Southern District of New York
500 Pearl Street, Room 120
New York, NY 10007-1312

Re: Transfer of our Civil Case No. 2:10-cv-02683-AHM (VBKx)
Case Title: Rodolfo Fidel Mendoza v. General Motors, LLC

Dear Sir/Madam:

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our file:

☐ Original case file documents are enclosed in paper format.
☑ Electronic Documents are accessible through Pacer.
☐ Other: _____

Very truly yours,

Clerk, U.S. District Court

Date: 12/16/2010

By /s/ J Lam (Jenny_Lam@cacd.uscourts.gov)
Deputy Clerk

cc: All counsel of record

TO BE COMPLETED BY RECEIVING DISTRICT

Please acknowledge receipt via e-mail to appropriate address listed below and provide the case number assigned in your district:

☑ CivilIntakecourtdocs-LA@cacd.uscourts.gov (Los Angeles Office)
☐ CivilIntakecourtdocs-RS@cacd.uscourts.gov (Riverside Office)
☐ CivilIntakecourtdocs-SA@cacd.uscourts.gov (Santa Ana Office)

Case Number: _____

Clerk, U.S. District Court

Date: _____

By _____
Deputy Clerk

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Western Division − Los Angeles)
CIVIL DOCKET FOR CASE #: 2:10−cv−02683−AHM−VBK

Rodolfo Fidel Mendoza v. General Motors, LLC
Assigned to: Judge A. Howard Matz
Referred to: Magistrate Judge Victor B. Kenton
Cause: 28:1331 Fed. Question

Date Filed: 04/13/2010
Date Terminated: 12/15/2010
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Rodolfo Fidel Mendoza
individually, and on behalf of a class of similarly situated individuals

represented by **Dara Tabesh**
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V.

Defendant

General Motors, LLC

represented by **Gregory R Oxford**
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Email: goxford@icclawfirm.com

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/13/2010	Ï 1	COMPLAINT against Defendant General Motors, LLC. Case assigned to Judge A. Howard Matz for all further proceedings. Discovery referred to Magistrate Judge Victor B. Kenton.(Filing fee $ 350: PAID) Jury Demanded., filed by plaintiff Rodolfo Fidel Mendoza.(ghap) (ds). (Entered: 04/14/2010)
04/13/2010	Ï	21 DAY Summons Issued re Complaint − (Discovery) 1 as to Defendant General Motors, LLC. (ghap) (Entered: 04/14/2010)
04/13/2010	Ï 2	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Rodolfo Fidel Mendoza. (ghap) (ds). (Entered: 04/14/2010)
04/13/2010	Ï 4	DEMAND for Jury Trial filed by plaintiff Rodolfo Fidel Mendoza. (ghap) (ds). (Entered: 04/14/2010)
04/14/2010	Ï 3	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ: Counsel for plaintiff shall serve this Order on all defendant and/or their counsel along with the summons and complaint, or if that is not practicable as soon as possible thereafter. If this case was assigned to this Court after being removed from State Court, the defendant who removed the case shall serve this Order on all other parties. This case have been assigned to the calendar of Judge A. Howard Matz. (kbr). (Entered: 04/14/2010)
04/28/2010	Ï 5	PROOF OF SERVICE Executed by Plaintiff Rodolfo Fidel Mendoza, upon Defendant General Motors, LLC served on 4/27/2010, answer due 5/18/2010. Service of the Summons and Complaint were executed upon Maria Sanchez agent for service of process in compliance with California Code of Civil Procedure by personal service. Original Summons NOT returned. (Rose, Adam) (Entered: 04/28/2010)
05/13/2010	Ï 6	FIRST STIPULATION Extending Time to Answer the complaint as to General Motors, LLC answer now due 6/21/2010, filed by Defendant General Motors, LLC.(Oxford, Gregory) (Entered: 05/13/2010)
06/17/2010	Ï 7	NOTICE of Association of Counsel associating attorney Dara Tabesh on behalf of Plaintiff Rodolfo Fidel Mendoza. Filed by Plaintiff Rodolfo Fidel Mendoza (Tabesh, Dara) (Entered: 06/17/2010)
06/17/2010	Ï 8	First STIPULATION for Extension of Time to File Plaintiff's First Amended Class Action Complaint and Defendant's Response filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Proposed Order re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response)(Tabesh, Dara) (Entered: 06/17/2010)
06/17/2010	Ï 9	First STIPULATION for Extension of Time to File Class Certification Motion filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Proposed Order re: Stipulation to Continue Class Certification Filing Date)(Tabesh, Dara) (Entered: 06/17/2010)
06/17/2010	Ï 10	NOTICE filed by Plaintiff Rodolfo Fidel Mendoza. *Notice of Errata* (Attachments: # 1 Proposed Order Continuing Deadline for Filing Class Certification Motion)(Tabesh, Dara) (Entered: 06/17/2010)
06/17/2010	Ï 11	NOTICE filed by Plaintiff Rodolfo Fidel Mendoza. *Notice of Errata* (Attachments: # 1 Proposed Order Proposed Order re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response)(Tabesh, Dara) (Entered: 06/17/2010)
06/18/2010	Ï 12	

		ORDER FILING OF PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT AND DEFENDANT'S RESPONSE by Judge A. Howard Matz. The Court has reviewed and considered the parties 6/17/2010 Stipulation 8 re: Filing of Plaintiffs First Amended Class Action Complaint and Defendant's Response. Based on the Stipulation and GOOD CAUSE APPEARING, that (1) Plaintiff will file his First Amended Class Action Complaint by 7/16/2010 at the Civil Intake Window. (2) GM will file its motion to dismiss or transfer by 8/16/2010; (3) Plaintiff will file his opposition to GM's motion by 9/7/2010. GM will file its reply in support of its motion by 9/20/2010; GMs motion shall be scheduled for hearing on 9/27/2010, at 10:00 AM. Courtroom 14, in the Central District of California, Western Division. (jp) (Entered: 06/18/2010)
06/18/2010	13	ORDER CONTINUING DEADLINE FOR FILING CLASS CERTIFICATION MOTION by Judge A. Howard Matz, re Stipulation for Extension of Time to File 9 . It is hereby ordered that Plaintiff's July 31, 2010 deadline for filing a motion for class certification pursuant to Central District Local Rule 23−3 is hereby continued. (kbr) (Entered: 06/18/2010)
07/15/2010	14	FIRST AMENDED COMPLAINT 1 against Defendants General Motors, LLC filed by Plaintiff Rodolfo Fidel Mendoza. (lom) (jp). (Entered: 07/16/2010)
08/13/2010	15	NOTICE OF MOTION AND MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* filed by Defendant General Motors, LLC. (Oxford, Gregory) (Entered: 08/13/2010)
08/13/2010	16	MEMORANDUM in Support of MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Oxford, Gregory) (Entered: 08/13/2010)
08/13/2010	17	DECLARATION of Gregory R. Oxford In Support of MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Attachments: # 1 Exhibit Exhibits 1 through 4)(Oxford, Gregory) (Entered: 08/13/2010)
08/13/2010	18	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B through D)(Oxford, Gregory) (Entered: 08/13/2010)
08/16/2010	19	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 . The following error(s) was found: Proposed Document was not submitted as a separate attachment. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and until the court directs you to do so. (se) (Entered: 08/16/2010)
08/22/2010	20	STIPULATION for Extension of Time to File Opposition to Motion to Dismiss or Transfer filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Proposed Order re Stipulation to Extend Briefing and Hearing Schedule on Motion to Dismiss or Transfer)(Tabesh, Dara) (Entered: 08/22/2010)
08/23/2010	21	ORDER by Judge A. Howard Matz. The Court has reviewed and considered the parties Stipulation to Extend Briefing and Hearing for Motion to Dismiss for Lack of Jurisdiction or Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court 20 and GOOD CAUSE APPEARING, that Plaintiff will file his Opposition to Defendant's Motion by 9/20/2010; Defendant will file its Reply in support of its motion by 10/4/2010; Defendant Motion 15 shall be scheduled for hearing on 10/18/2010 at 10:00 AM. (jp) (Entered: 08/23/2010)

09/14/2010	ï 22	NOTICE of Association of Counsel associating attorney Payam Shahian on behalf of Plaintiff Rodolfo Fidel Mendoza. Filed by Plaintiff Rodolfo Fidel Mendoza (Shahian, Payam) (Entered: 09/14/2010)
09/15/2010	ï 23	Second STIPULATION for Extension of Time to File Opposition to Motion to Dismiss or Transfer (without changing hearing date) filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Proposed Order Modifying Briefing Schedule for Motion to Dismiss or Transfer)(Tabesh, Dara) (Entered: 09/15/2010)
09/16/2010	ï 24	ORDER by Judge A. Howard Matz GRANTING Stipulation Modifying Briefing Schedule for Motion to Dismiss 23 . Plaintiff's opposition due 9/27/10; defendant's reply due 10/4/10; Motion remains scheduled for hearing on 10/18/10 at 10:00 am. (se) (Entered: 09/16/2010)
09/27/2010	ï 25	DECLARATION of Dara Tabesh in opposition to MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8 (part 1 of 2), # 9 Exhibit 8 (part 2 of 2), # 10 Exhibit 9)(Tabesh, Dara) (Entered: 09/27/2010)
09/27/2010	ï 26	Objections to Defendant's Request for Judicial Notice Exs. B and C Request for Judicial Notice Opposition re: MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Plaintiff Rodolfo Fidel Mendoza. (Tabesh, Dara) (Entered: 09/27/2010)
09/27/2010	ï 27	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 *re Opposition* filed by Plaintiff Rodolfo Fidel Mendoza. (Tabesh, Dara) (Entered: 09/27/2010)
09/27/2010	ï 28	MEMORANDUM in Opposition to MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Plaintiff Rodolfo Fidel Mendoza. (Tabesh, Dara) (Entered: 09/27/2010)
09/28/2010	ï 29	NOTICE of Errata re Opposition to Motion to Dismiss or Transfer filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Exhibit MPA in Opposition to Defendant's Motion to Dismiss or Transfer)(Tabesh, Dara) (Entered: 09/28/2010)
09/29/2010	ï 30	STIPULATION for Extension of Time to File Reply filed by Defendant General Motors, LLC. (Attachments: # 1 Proposed Order)(Oxford, Gregory) (Entered: 09/29/2010)
09/30/2010	ï 31	ORDER EXTENDING BRIEFING AND HEARING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT by Judge A. Howard Matz, re Stipulation for Extension of Time to File Response/Reply 30 . The hearing on Defendant's motion shall be continued to October 25, 2010, at 10: 00 a.m. (kbr) (Entered: 09/30/2010)
10/08/2010	ï 32	REPLY In Support MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Attachments: # 1 Exhibit Exhibit A)(Oxford, Gregory) (Entered: 10/08/2010)
10/22/2010	ï 33	MINUTE IN CHAMBERS by Judge A. Howard Matz: On the Court's own motion, the Court hereby takes OFF−CALENDAR and UNDER SUBMISSION defendant's Motion to Dismiss 15 previously set for 10/25/10. The parties will be notified if a hearing is necessary. (jp) (Entered: 10/22/2010)

10/25/2010	ï 34	SUPPLEMENT to MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Attachments: # 1 Exhibit)(Oxford, Gregory) (Entered: 10/25/2010)
12/15/2010	ï 35	MINUTES (IN CHAMBERS) by Judge A. Howard Matz: This case is before the court on defendant General Motors, Motion to Dismiss plaintiff plaintiff Rodolfo Fidel Mendoza First Amended Complaint for Lack of Subject Matter Jurisdiction under FRCP 12(b)(1) or, in the alternative, to Transfer this case under 28 USC section 1412 to the Southern District of New York for referral to the bankruptcy court, (see attached Minute Order for further information), the Court GRANTS New GM Motion to Transfer this Action to the Southern District of New York for referral to the Bankruptcy Court 15 . No hearing is necessary. FRCP 78; L.R. 7−15. (MD JS−6. Case Terminated.) (Attachments: # 1 CV−22 Transmittal Letter − Civil Case Transfer Out) (jp) (Entered: 12/16/2010)

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Western Division − Los Angeles)
CIVIL DOCKET FOR CASE #: 2:10−cv−02683−AHM−VBK
Internal Use Only

Rodolfo Fidel Mendoza v. General Motors, LLC
Assigned to: Judge A. Howard Matz
Referred to: Magistrate Judge Victor B. Kenton
Cause: 28:1331 Fed. Question

Date Filed: 04/13/2010
Date Terminated: 12/15/2010
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Rodolfo Fidel Mendoza
individually, and on behalf of a class of similarly situated individuals

represented by **Dara Tabesh**
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V.

Defendant

General Motors, LLC

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Email: goxford@icclawfirm.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
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04/13/2010	Ï 4	DEMAND for Jury Trial filed by plaintiff Rodolfo Fidel Mendoza. (ghap) (ds). (Entered: 04/14/2010)
04/14/2010	Ï 3	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ: Counsel for plaintiff shall serve this Order on all defendant and/or their counsel along with the summons and complaint, or if that is not practicable as soon as possible thereafter. If this case was assigned to this Court after being removed from State Court, the defendant who removed the case shall serve this Order on all other parties. This case have been assigned to the calendar of Judge A. Howard Matz. (kbr). (Entered: 04/14/2010)
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06/17/2010	Ï 10	NOTICE filed by Plaintiff Rodolfo Fidel Mendoza. *Notice of Errata* (Attachments: # 1 Proposed Order Continuing Deadline for Filing Class Certification Motion)(Tabesh, Dara) (Entered: 06/17/2010)
06/17/2010	Ï 11	NOTICE filed by Plaintiff Rodolfo Fidel Mendoza. *Notice of Errata* (Attachments: # 1 Proposed Order Proposed Order re: Filing of Plaintiff's First Amended Class Action Complaint and Defendant's Response)(Tabesh, Dara) (Entered: 06/17/2010)

06/18/2010	ï 12	ORDER FILING OF PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT AND DEFENDANT'S RESPONSE by Judge A. Howard Matz. The Court has reviewed and considered the parties 6/17/2010 Stipulation 8 re: Filing of Plaintiffs First Amended Class Action Complaint and Defendant's Response. Based on the Stipulation and GOOD CAUSE APPEARING, that (1) Plaintiff will file his First Amended Class Action Complaint by 7/16/2010 at the Civil Intake Window. (2) GM will file its motion to dismiss or transfer by 8/16/2010; (3) Plaintiff will file his opposition to GM's motion by 9/7/2010. GM will file its reply in support of its motion by 9/20/2010; GMs motion shall be scheduled for hearing on 9/27/2010, at 10:00 AM. Courtroom 14, in the Central District of California, Western Division. (jp) (Entered: 06/18/2010)
06/18/2010	ï 13	ORDER CONTINUING DEADLINE FOR FILING CLASS CERTIFICATION MOTION by Judge A. Howard Matz, re Stipulation for Extension of Time to File 9 . It is hereby ordered that Plaintiff's July 31, 2010 deadline for filing a motion for class certification pursuant to Central District Local Rule 23−3 is hereby continued. (kbr) (Entered: 06/18/2010)
07/15/2010	ï 14	FIRST AMENDED COMPLAINT 1 against Defendants General Motors, LLC filed by Plaintiff Rodolfo Fidel Mendoza. (lom) (jp). (Entered: 07/16/2010)
08/13/2010	ï 15	NOTICE OF MOTION AND MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* filed by Defendant General Motors, LLC. (Oxford, Gregory) (Entered: 08/13/2010)
08/13/2010	ï 16	MEMORANDUM in Support of MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Oxford, Gregory) (Entered: 08/13/2010)
08/13/2010	ï 17	DECLARATION of Gregory R. Oxford In Support of MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Attachments: # 1 Exhibit Exhibits 1 through 4)(Oxford, Gregory) (Entered: 08/13/2010)
08/13/2010	ï 18	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B through D)(Oxford, Gregory) (Entered: 08/13/2010)
08/16/2010	ï 19	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 . The following error(s) was found: Proposed Document was not submitted as a separate attachment. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and until the court directs you to do so. (se) (Entered: 08/16/2010)
08/22/2010	ï 20	STIPULATION for Extension of Time to File Opposition to Motion to Dismiss or Transfer filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Proposed Order re Stipulation to Extend Briefing and Hearing Schedule on Motion to Dismiss or Transfer)(Tabesh, Dara) (Entered: 08/22/2010)
08/23/2010	ï 21	ORDER by Judge A. Howard Matz. The Court has reviewed and considered the parties Stipulation to Extend Briefing and Hearing for Motion to Dismiss for Lack of Jurisdiction or Alternatively, for Transfer to the Southern District of New York for Referral to the Bankruptcy Court 20 and GOOD CAUSE APPEARING, that Plaintiff will file his Opposition to Defendant's Motion by 9/20/2010; Defendant will file its Reply in support of its motion by 10/4/2010; Defendant Motion 15 shall be scheduled for hearing on 10/18/2010 at 10:00 AM. (jp) (Entered: 08/23/2010)

09/14/2010	ï 22	NOTICE of Association of Counsel associating attorney Payam Shahian on behalf of Plaintiff Rodolfo Fidel Mendoza. Filed by Plaintiff Rodolfo Fidel Mendoza (Shahian, Payam) (Entered: 09/14/2010)
09/15/2010	ï 23	Second STIPULATION for Extension of Time to File Opposition to Motion to Dismiss or Transfer (without changing hearing date) filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Proposed Order Modifying Briefing Schedule for Motion to Dismiss or Transfer)(Tabesh, Dara) (Entered: 09/15/2010)
09/16/2010	ï 24	ORDER by Judge A. Howard Matz GRANTING Stipulation Modifying Briefing Schedule for Motion to Dismiss 23 . Plaintiff's opposition due 9/27/10; defendant's reply due 10/4/10; Motion remains scheduled for hearing on 10/18/10 at 10:00 am. (se) (Entered: 09/16/2010)
09/27/2010	ï 25	DECLARATION of Dara Tabesh in opposition to MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8 (part 1 of 2), # 9 Exhibit 8 (part 2 of 2), # 10 Exhibit 9)(Tabesh, Dara) (Entered: 09/27/2010)
09/27/2010	ï 26	Objections to Defendant's Request for Judicial Notice Exs. B and C Request for Judicial Notice Opposition re: MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Plaintiff Rodolfo Fidel Mendoza. (Tabesh, Dara) (Entered: 09/27/2010)
09/27/2010	ï 27	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 *re Opposition* filed by Plaintiff Rodolfo Fidel Mendoza. (Tabesh, Dara) (Entered: 09/27/2010)
09/27/2010	ï 28	MEMORANDUM in Opposition to MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Plaintiff Rodolfo Fidel Mendoza. (Tabesh, Dara) (Entered: 09/27/2010)
09/28/2010	ï 29	NOTICE of Errata re Opposition to Motion to Dismiss or Transfer filed by Plaintiff Rodolfo Fidel Mendoza. (Attachments: # 1 Exhibit MPA in Opposition to Defendant's Motion to Dismiss or Transfer)(Tabesh, Dara) (Entered: 09/28/2010)
09/29/2010	ï 30	STIPULATION for Extension of Time to File Reply filed by Defendant General Motors, LLC. (Attachments: # 1 Proposed Order)(Oxford, Gregory) (Entered: 09/29/2010)
09/30/2010	ï 31	ORDER EXTENDING BRIEFING AND HEARING SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY, FOR TRANSFER TO THE SOUTHERN DISTRICT OF NEW YORK FOR REFERRAL TO THE BANKRUPTCY COURT by Judge A. Howard Matz, re Stipulation for Extension of Time to File Response/Reply 30 . The hearing on Defendant's motion shall be continued to October 25, 2010, at 10: 00 a.m. (kbr) (Entered: 09/30/2010)
10/08/2010	ï 32	REPLY In Support MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Attachments: # 1 Exhibit Exhibit A)(Oxford, Gregory) (Entered: 10/08/2010)
10/22/2010	ï 33	MINUTE IN CHAMBERS by Judge A. Howard Matz: On the Court's own motion, the Court hereby takes OFF−CALENDAR and UNDER SUBMISSION defendant's Motion to Dismiss 15 previously set for 10/25/10. The parties will be notified if a hearing is necessary. (jp) (Entered: 10/22/2010)

10/25/2010	ï 34	SUPPLEMENT to MOTION to Dismiss for Lack of Jurisdiction *or, Alternatively, For Transfer to the Southern District of New York for Referral to the Bankruptcy Court* 15 filed by Defendant General Motors, LLC. (Attachments: # 1 Exhibit)(Oxford, Gregory) (Entered: 10/25/2010)
12/15/2010	ï 35	MINUTES (IN CHAMBERS) by Judge A. Howard Matz: This case is before the court on defendant General Motors, Motion to Dismiss plaintiff plaintiff Rodolfo Fidel Mendoza First Amended Complaint for Lack of Subject Matter Jurisdiction under FRCP 12(b)(1) or, in the alternative, to Transfer this case under 28 USC section 1412 to the Southern District of New York for referral to the bankruptcy court, (see attached Minute Order for further information), the Court GRANTS New GM Motion to Transfer this Action to the Southern District of New York for referral to the Bankruptcy Court 15 . No hearing is necessary. FRCP 78; L.R. 7−15. (MD JS−6. Case Terminated.) (Attachments: # 1 CV−22 Transmittal Letter − Civil Case Transfer Out) (jp) (Entered: 12/16/2010)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RODOLFO FIDEL MENDOZA,

Plaintiff,

-against-

GENERAL MOTORS, LLC,

Defendant.

10 Civ. 9383(PKC)

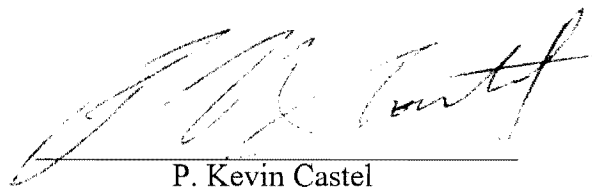
ORDER

P. KEVIN CASTEL, U.S.D.J.

After concluding that the underlying claims commenced in the United States District Court for the Central District of California, were "related to" a case under title 11, Honorable A. Howard Matz, U.S.D.J., transferred the action to this Court where the bankruptcy proceeding of General Motors, LLC is pending.

The Standing Order of July 10, 1984, signed by then Acting Chief Judge Robert J. Ward, refers "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 . . . to the bankruptcy judges for this district." Accordingly, this matter is referred to the United States Bankruptcy Court for the Southern District of New York. The Clerk of this Court is directed to refer the case to the United States Bankruptcy Court for the Southern District of New York and administratively close the matter in this Court.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
December 17, 2010