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Attorneys for Defendant
City of Oakland Police & Fire Retirement System

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

In re:)	Chapter 11 Case
)	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,)	Case No. 09-50026 (REG)
)	
Debtors.)	(Jointly Administered)
)	
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MOTORS LIQUIDATION COMPANY)	
AVOIDANCE ACTION TRUST, by and through)	Adversary Proceeding
Wilmington Trust Company, solely in its capacity as)	
Trust Administrator and Trustee,)	Case No. 09-00504 (REG)
)	
Plaintiff,)	
)	
vs.)	
)	
JPMORGAN CHASE BANK, N.A., <i>et al.</i> ,)	
)	
Defendants.)	
)	

ANSWER TO FIRST AMENDED ADVERSARY PROCEEDING COMPLAINT

Defendant City of Oakland Police & Fire Retirement System (“PFRS”), by its attorneys, Office of the City Attorney for the City of Oakland, hereby answers the *First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* dated May 20, 2015 (the “Complaint”) of Plaintiff the Motors Liquidation Company Avoidance Action Trust (the “Trust”).

JURISDICTION AND VENUE

1. The allegations contained in paragraph 1 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1.

2. The allegations contained in paragraph 2 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2.

3. The allegations contained in paragraph 3 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3.

4. The allegations contained in paragraph 4 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4.

5. The allegations contained in paragraph 5 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5.

PARTIES

6. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Complaint.

7. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

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506. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 506 of the Complaint.

507. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 507 of the Complaint.

508. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 508 of the Complaint.

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531. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 531 of the Complaint.

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541. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 541 of the Complaint.

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558. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 558 of the Complaint.

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563. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 563 of the Complaint.

564. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 564 of the Complaint.

565. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 565 of the Complaint.

566. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 566 of the Complaint.

567. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 567 of the Complaint.

568. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 568 of the Complaint.

569. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 569 of the Complaint.

570. The allegations contained in paragraph 570 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 570 of the Complaint, except that PFRS admits that the Trust collectively refers to the parties listed in paragraphs 15 through 569 of the Complaint as “Defendants.”

GENERAL ALLEGATIONS

The Term Loan Agreement

571. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 571 of the Complaint.

572. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 572 of the Complaint, except that PFRS admits that certain lenders, including some of those named as Defendants in this action, extended credit to the Debtors secured by a first-priority lien on certain assets of the Debtors pursuant to the terms

of the Term Loan Agreement, and refers to the Term Loan Agreement for the terms set forth therein.

573. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 573 of the Complaint.

The DIP Order

574. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 574 of the Complaint.

575. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 575 of the Complaint.

576. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 576 of the Complaint.

577. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 577 of the Complaint.

578. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 578 of the Complaint.

579. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 579 of the Complaint, except that PFRS denies that it consented to the jurisdiction of this Court.

The Lien Securing The Term Loan Agreement Was Not Perfected As Of The Petition Date

580. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 580 of the Complaint.

581. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 581 of the Complaint.

582. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 582 of the Complaint.

583. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 583 of the Complaint.

584. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 584 of the Complaint, and respectfully refers the Court to the Decision on Cross Motions for Summary Judgment [Adv. Pro. Dkt. No. 71], the Judgment [Adv. Pro. Dkt. No. 73], and the Order on Cross Motions for Summary Judgment [Adv. Pro. Dkt. No. 72], each of which speaks for itself.

585. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 585 of the Complaint, and respectfully refers the Court to the judgment rendered by the United States Court of Appeals for the Second Circuit, which speaks for itself.

First Claim for Relief
(Avoidance of Lien as Unperfected)

586. PFRS repeats and re-alleges its responses to paragraphs 1 through 585 of the Complaint with the same force and effect as if fully set forth herein.

587. The allegations contained in paragraph 587 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 587.

588. The allegations contained in paragraph 588 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies the allegations set forth in paragraph 588.

589. The allegations contained in paragraph 589 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies the allegations set forth in paragraph 589.

Second Claim for Relief
(Avoidance and Recovery of Postpetition Transfers)

590. PFRS repeats and re-alleges its responses to paragraphs 1 through 589 of the Complaint with the same force and effect as if fully set forth herein.

591. PFRS denies the allegations of paragraph 591 of the Complaint.

592. The allegations contained in paragraph 592 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS admits that section 549(a) of the Bankruptcy Code states that “the trustee may avoid a transfer of property of the estate . . . that occurs after the commencement of the case . . . that is not authorized . . . by the court” and refers to section 549 of the Bankruptcy Code for the provisions set forth therein. In all other respects, PFRS denies the allegations set forth in paragraph 592.

593. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 593 of the Complaint, and respectfully refers the Court to the DIP Order, which speaks for itself.

594. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 594 of the Complaint.

595. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 595 of the Complaint.

596. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 596 of the Complaint.

597. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 597 of the Complaint, and respectfully refers the Court to the DIP Order, which speaks for itself.

598. PFRS denies the allegations of paragraph 598 of the Complaint.

599. PFRS denies the allegations of paragraph 599 of the Complaint.

600. PFRS denies the allegations of paragraph 600 of the Complaint.

601. PFRS denies the allegations of paragraph 601 of the Complaint.

602. The allegations contained in paragraph 602 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 602.

603. PFRS denies the allegations of paragraph 603 of the Complaint.

Third Claim for Relief
(Avoidance and Recovery of Payments as Preferential Transfers)

604. PFRS repeats and re-alleges its responses to paragraphs 1 through 603 of the Complaint with the same force and effect as if fully set forth herein.

605. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 605 of the Complaint.

606. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 606 of the Complaint.

607. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 607 of the Complaint.

608. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 608 of the Complaint.

609. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 609 of the Complaint.

610. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 610 of the Complaint.

611. PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 611 of the Complaint.

612. PFRS denies the allegations of paragraph 612 of the Complaint.

613. PFRS denies the allegations of paragraph 613 of the Complaint.

614. The allegations contained in paragraph 614 of the Complaint are assertions of law to which no response is required. To the extent a response is required, PFRS denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 614.

615. PFRS denies the allegations of paragraph 615 of the Complaint.

Fourth Claim for Relief
(To Disallow Any Claim of Defendants Until Disgorgement)

616. PFRS repeats and re-alleges its responses to paragraphs 1 through 615 of the Complaint with the same force and effect as if fully set forth herein.

617. PFRS denies the allegations of paragraph 617 of the Complaint.

618. PFRS denies the allegations of paragraph 618 of the Complaint.

Relief Sought

No response is required to the Trust's prayer for relief. To the extent a response is required, PFRS denies all claims for relief and denies the allegations set forth in the prayer for relief

AFFIRMATIVE DEFENSES

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

FIRST DEFENSE

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

SECOND DEFENSE

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

THIRD DEFENSE

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

FOURTH DEFENSE

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

FIFTH DEFENSE

Any Termination Statement is void and ineffective because JPMorgan Chase Bank, N.A. ("JPMorgan"), in its capacity as Administrative Agent for the Synthetic Lease, was

not the secured party of record under the Term Loan UCC Financing Statements and therefore had no power or authority to authorize the Debtors to file the Termination Statement.

SIXTH DEFENSE

Any Termination Statement is void and ineffective because JPMorgan never obtained the consent of PFRS to permit the Debtors to file the Termination Statement as required under the Term Loan Agreement.

SEVENTH DEFENSE

Any Termination Statement is void and ineffective because JPMorgan, both in its capacity as Administrative Agent for the Synthetic Lease and in its capacity as Administrative Agent for the Term Loan, exceeded the extent of its authority as an agent of its principals, including PFRS, when it permitted the Debtors to file the Termination Statement.

EIGHTH DEFENSE

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

NINTH DEFENSE

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

TENTH DEFENSE

PFRS was a secured party and had perfected security interests on the Petition Date in certain assets of the Debtors pursuant to the Term Loan Agreement as set forth in multiple UCC-1 financing statements filed throughout the United States, including, but not limited to the UCC-1 financing statement numbered 6416822 3 and filed on November 30, 2006 with the Secretary of State of Delaware listing Saturn Corporation as the “debtor.”

ELEVENTH DEFENSE

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

TWELFTH DEFENSE

The claims asserted in the Complaint against PFRS are barred by the doctrine of mistake, restitution, and unjust enrichment, which requires reinstatement of any erroneously discharged security interest.

THIRTEENTH DEFENSE

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

FOURTEENTH DEFENSE

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

FIFTEENTH DEFENSE

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

SIXTEENTH DEFENSE

The claims asserted in the Complaint are barred to the extent that PFRS is not a transferee from which the Trust may recover the value of an avoided transfer under section 550(b) of the Bankruptcy Code.

SEVENTEENTH DEFENSE

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

EIGHTEENTH DEFENSE

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

NINETEENTH DEFENSE

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

TWENTIETH DEFENSE

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

TWENTY-FIRST DEFENSE

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

TWENTY-SECOND DEFENSE

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

TWENTY-THIRD DEFENSE

The claims asserted in the Amended Complaint against PFRS are barred by the doctrines of recoupment and/or setoff.

TWENTY-FOURTH DEFENSE

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

TWENTY-FIFTH DEFENSE

Pursuant to the Term Loan Agreement, the Debtors agreed to hold harmless and indemnify each Term Lender to the full extent of any losses, expenses, claims, or proceedings related to or arising out of the Term Loan Agreement. PFRS hereby invokes all of its contractual and common law indemnity rights, and hereby provides notice to the Trust and the Debtors thereof.

DEMAND FOR JURY TRIAL

PFRS hereby demands, pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure, a trial by jury of all issues raised in this adversary proceeding.

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

- A. Dismissing with prejudice the Trust's Complaint in its entirety and on the merits;
- B. Awarding PFRS its costs of defending this action, including reasonable attorneys' fees, costs, and disbursements; and

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

Dated: November 30, 2015

Respectfully submitted,

BARBARA J. PARKER
OFFICE OF THE CITY ATTORNEY
CITY OF OAKLAND

/s/ Selia M. Warren

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