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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	: Chapter 11
	: :
MOTORS LIQUIDATION COMPANY,	: Case No.: 09-50026 (MG)
	: :
Debtor.	: (Jointly Administered)
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**MARLENE S. KARU’S OBJECTION TO
ORDER TO SHOW CAUSE REGARDING CERTAIN ISSUES
ARISING FROM LAWSUITS WITH CLAIMS ASSERTED AGAINST
GENERAL MOTORS LLC (“NEW GM”) THAT INVOLVE VEHICLES
MANUFACTURED BY GENERAL MOTORS CORPORATION (“OLD GM”)**

Marlene S. Karu (“**Karu**”) respectfully objects to the *Order to Show Cause Regarding Certain Issues Arising From Lawsuits with Claims Asserted Against General Motors LLC (“New GM”) that Involve Vehicles Manufactured by General Motors Corporation (“Old GM”)* [Dkt. No. 13802] (“**Order to Show Cause**”) on the following grounds:

1. Objector Karu is a plaintiff in a class action filed against New GM and others pertaining to a defective Takata Airbag (the “**Takata Airbag defect**”), installed by Old GM, in her 2008 Saab 9-3, which she purchased used in or around September 2010, after the Sale Order was entered and after the 363 Sale closed.¹
2. Karu is a Used Car Purchaser as defined in the Order to Show Cause.

¹ Defined Terms not separately defined herein shall have the meanings ascribed in the Glossary of Terms appended to the Order to Show Cause.

3. Karu's lawsuit was filed in the United States District Court for the District of New Jersey on July 27, 2016. By order of the United States Judicial Panel on Multidistrict Litigation ("**JPML**") dated December 14, 2016, Karu's action was transferred to the United States District Court for the Southern District of Florida (where it is now styled *Karu v. Takata Corp., et al.* Case No. 16-25241-CV-MORENO) for inclusion in *In re: Takata Airbag Product Liability Litigation*, MDL No. 2599, Master File No. 15-MD-2599-MORENO and Case No. 14-24009-CV-MORENO ("**Takata MDL**"), pending before District Judge Federico A. Moreno.

4. By *sua sponte* order entered December 29, 2016, Judge Moreno stayed the *Karu* case and placed it in a "civil suspense file," as he has most other "tag along" actions transferred by the JPML to the Takata MDL, while providing that "the case shall be restored to the active docket upon motion of a party if circumstances change...." [Takata MDL, 1:14-cv-24009-FAM, Dkt. No. 382.]

5. Judge Moreno stayed the *Karu* case in part on the supposition that Karu's claims against New GM and the two other named defendants (together, the "**Takata entities**") would be prosecuted pursuant to the presently operative class action complaint, or a future amendment thereto, filed by the Takata MDL plaintiffs (collectively, the "**Takata MDL Plaintiffs**"). *Id.*

6. The presently operative Takata MDL complaint, however, does not name New GM as a defendant. While the court-appointed lead counsel for the Takata MDL Plaintiffs have stated in public filings that the Takata MDL Plaintiffs are contemplating filing a new complaint naming New GM, it is not certain they will do so, and there is no timetable by which they must do so. Consequently, Karu's claims against New GM (and, in her view, her claims against the Takata entities) are not currently being prosecuted in the Takata MDL and may not be prosecuted by the Takata MDL Plaintiffs in the future.

7. Karu, therefore, reserves her rights to move to restore her case to the active docket in the Takata MDL pursuant to Judge Moreno's stay order and to pursue discovery and otherwise prosecute her claims against New GM and the Takata entities in the Southern District of Florida.

8. The Order to Show Cause states that "no discovery shall be authorized or take place in this Court regarding the 2016 Threshold Issues or any other issue related to the enforcement or applicability of the Sale Order to a claim against New GM" (the "**Discovery Bar**").

9. Karu **OBJECTS** the Discovery Bar to the extent it is or may be interpreted to bar or interfere with Karu's efforts to obtain discovery from New GM for use against New GM *or* against the Takata entities in the *Karu* action or in the Takata MDL. If New GM objects to any future discovery requests that Karu may serve on the ground that either her claims against New GM or her requests for discovery from New GM are impacted by the Sale Order, any such future objection should be adjudicated by Judge Moreno when the discovery objection is served.

10. Karu further **OBJECTS** to the Order to Show Cause on the ground that she should not be deemed subject to that Order or be required to participate in the proceedings involving the 2016 Threshold Issues at all. Neither Karu nor to her knowledge any similarly situated Used Car Purchaser with Takata Airbag defect claims against New GM (i) was given notice of the GM Ignition Switch defect-related proceedings before Judge Gerber or (ii) had their interests represented during those proceedings. Consequently, neither Karu nor the class she seeks to represent were parties to those proceedings, and neither Karu nor the class can be bound by Judge Gerber's April 2015 or November 2015 Decisions or his June 2015 or December 2015 Judgments. The Second Circuit's Opinion with respect to the lack of notice of the Sale Order given to Used Car Purchasers, moreover, was a ruling of law that unambiguously establishes a

legal principle in this Circuit that Karu and similarly situated Used Car Purchasers are not under any circumstances barred by the Sale Order from suing New GM. Karu should not be burdened with the need to appear before this Court to litigate issues that the Second Circuit has already definitively resolved against New GM. Karu, accordingly, respectfully seeks an order holding, pursuant to the Second Circuit's Opinion, that her claims and the *Karu* action are not barred by the Sale Order and that Karu may, as a matter of law, proceed forthwith before Judge Moreno.

WHEREFORE, Karu respectfully requests an Order holding that:

(a) the Discovery Bar in the Order to Show Cause does not prospectively bar discovery against New GM in the *Karu* action or in the Takata MDL;

(b) if New GM objects to any future discovery requests that Karu may serve on the ground that either her claims against New GM or her requests for discovery from New GM are impacted by the Sale Order, any such future objection shall be submitted for adjudication by Judge Moreno at the time Karu's discovery request and New GM's objection are served; and

(c) neither Karu's claims nor the *Karu* action are barred by the Sale Order and Karu, accordingly, is not subject to the Order to Show Cause and need not participate in the proceedings in this Court concerning the 2016 Threshold Issues.

Dated: January 3, 2017

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CERTIFICATE OF SERVICE

This is to certify that on January 3, 2017, I caused to be served a true and correct copy of the attached *Marlene S. Karu's Objection To Order To Show Cause Regarding Certain Issues Arising From Lawsuits With Claims Asserted Against General Motors LLC ("New GM") That Involve Vehicles Manufactured By General Motors Corporation ("Old GM")* on the parties below by the methods stated below:

VIA ECF AND EMAIL:

Notice Parties

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Parties to the Motion to Enforce, filed by New GM on June 1, 2016 (ECF Doc.# 136341)

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Parties to the Motion to Enforce filed by New GM on June 24,2016 (ECF Doc.# 13655]

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