

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

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

The Parties¹ having conferred among themselves and with the Court pursuant to Fed. R. Civ. P. 16, made applicable by Fed. R. Bankr. P. 7016, the following statements, directions and agreements are adopted as the Pretrial Order herein.

I. NATURE OF THE CASE

This contested matter concerns whether the terms of the unsigned settlement agreement appearing at Dkt. No. 14061-1 (for definitional purposes only, the “Plaintiffs’ Settlement Agreement”) between counsel for Motors Liquidation Company GUC Trust (the “GUC Trust”) and counsel for Ignition Switch Plaintiffs,² certain Non-Ignition Switch Plaintiffs,³ and PIWD Plaintiffs⁴ (collectively, “Plaintiffs” or “Signatory Plaintiffs”) are binding on the parties thereto.

¹ The term “Parties” refers to Plaintiffs, the GUC Trust, New GM, and certain unaffiliated noteholders whose counsel has represented hold approximately 65% of the GUC Trust units (the “Participating Unitholders”).

² The term “Ignition Switch Plaintiffs” means those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with an ignition switch defect included in Recall No. 14V-047. New GM does not agree that Plaintiffs’ counsel represents all of those persons, has ever been retained by them, or has authority to speak for them.

³ The term “Non-Ignition Switch Plaintiffs” means those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with defects in ignition switches, side airbags or power steering included in Recall Nos. 14V-355, 14V-394, 14V-400, 14V-346 and 14V 540, 14V-118 and 14V-153. New GM does not agree that Plaintiffs’ counsel represents all of those persons, has ever been retained by them, or has authority to speak for them.

⁴ The term “PIWD Plaintiffs” means “those certain Ignition Switch Pre-Closing Accident Plaintiffs represented by PIWD Counsel,” and “PIWD Counsel” means “(i) Robert C. Hilliard of Hilliard Munoz Gonzalez,

During the period June 2017 through August 16, 2017, counsel for the GUC Trust engaged in settlement negotiations with Plaintiffs' counsel regarding potential resolution of the Late-Claims Motions and the underlying economic loss and personal injury claims against the GUC Trust. During these negotiations, counsel for the GUC Trust, counsel for the Participating Unitholders, and counsel for Plaintiffs prepared and exchanged many drafts of the Plaintiffs' Settlement Agreement and ancillary documents (the "Settlement Documents").⁵

On August 16, 2017, the GUC Trust notified the Court and Plaintiffs' counsel of its intention not to sign Plaintiffs' Settlement Agreement and its intention to enter into an agreement (the "Forbearance Agreement") with General Motors LLC ("New GM"). On September 11, 2017, Plaintiffs filed the *Motion to Enforce the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust* (the "Motion to Enforce"), which the Participating Unitholders joined. On September 12, 2017, the GUC Trust filed the *Motion of the Motors Liquidation Company GUC Trust Administrator Pursuant to Bankruptcy Code Sections 105(a), 363(b) and 1142(b) and Bankruptcy Rule 3021(d) to Authorize Entry into Forbearance Agreement with General Motors LLC* (the "Forbearance Agreement Approval Motion"), which New GM joined.

LLP and Thomas J. Henry of the law offices of Thomas J. Henry, but solely for the Pre-Closing Accident Plaintiffs reprsened by the two law firms; and (ii) Lisa M. Norman of Andrews Myers, P.C., but solely for the Pre-Closing Accident Plaintiffs represented by that law firm."

⁵ The "Settlement Documents" are (collectively): (a) the draft Settlement Agreement, which appears as Exhibit H to the Declaration of Edward Weisfelner; (b) the Settlement Order, which appears as Exhibit I to the Declaration of Edward Weisfelner; (c) the Claims Estimate Order, which appears as Exhibit J to the Declaration of Edward Weisfelner; (d) a motion to approve the settlement and estimate the aggregate allowed unsecured claims against the Old GM estate pursuant to Bankruptcy Rule 9019, which appears as Exhibit K to the Declaration of Edward Weisfelner; (e) draft supporting declarations from the Wilmington Trust Company as administrator of the GUC Trust and counsel to the parties, which appear as Exhibits L-O to the Declaration of Edward Weisfelner; (f) a Notice Procedures motion, which appears as Exhibit P to the Declaration of Edward Weisfelner; (g) short- and long-form notice to Plaintiffs, and notice to Unitholders, which appear as Exhibits Q-S to the Declaration of Edward Weisfelner; and (h) a declaration from the notice provider, which appears as Exhibit B to the Declaration of Edward Weisfelner.

On August 17, 2017, a conference was held before the Court concerning the disputes raised in connection with these motions (the “Dispute”). On October 11, 2017, the Court entered the Pre-Trial Stipulation and Scheduling Order (Dkt. No. 14130). Pursuant to the Pre-Trial Stipulation and Scheduling Order, the resolution of the Dispute is bifurcated into two phases, with the second phase being dependent on the results of Phase I. The trial scheduled for December 18-20, 2017 will address the following Phase 1 issues: (a) whether Plaintiffs’ Settlement Agreement is a binding agreement; and (b) whether New GM has standing to be heard on the issue described in (a).

II. BASIS FOR JURISDICTION, WHETHER THE CASE IS CORE OR NON-CORE, AND WHETHER THE BANKRUPTCY JUDGE MAY ENTER FINAL ORDERS OR JUDGMENT

The Parties agree that (a) this Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334; and (b) the claims in Phase 1 to be tried are core proceedings under 28 U.S.C. § 157(b), or they are otherwise related to a case under title 11 under 28 U.S.C. § 157(c) that may be heard and determined by this Court with consent of the parties subject to appellate review under 28 U.S.C. § 158. The Parties consent to entry of final orders or judgment.

III. STIPULATED FACTS

The Parties’ Joint Stipulation of Facts is set forth in Exhibit A to this Order.

IV. PARTIES’ CONTENTIONS

The pleadings are deemed amended to embrace only the following contentions of the parties:

A. Plaintiffs’ and Participating Unitholders’ Contentions

The Plaintiffs’ and Participating Unitholders’ contentions are set forth in Exhibit B to this Order.

B. GUC Trust's and New GM's Contentions

The GUC Trust's and New GM's contentions are set forth in Exhibit C-1 and Exhibit C-2 to this Order.

V. ISSUES TO BE TRIED

Pursuant to the Pre-Trial Stipulation and Scheduling Order, the resolution of the Dispute is bifurcated in two phases. This Order and the trial scheduled for December 18-20, 2017 will address only Phase 1, which considers: (a) whether Plaintiffs' Settlement Agreement is a binding agreement; and (b) whether New GM has standing to be heard on the issue described in (a).

VI. PLAINTIFFS' AND PARTICIPATING UNITHOLDERS' EXHIBITS

The Plaintiffs' and Participating Unitholders' exhibits are listed in Exhibit D to this Order.

VII. GUC TRUST AND NEW GM'S EXHIBITS

The GUC Trust's and New GM's trial exhibits are listed in Exhibit E to this Order.

No exhibit not listed by either Plaintiffs and Participating Unitholders on the one hand, or the GUC Trust and New GM on the other hand, may be used at trial except (a) for cross-examination purposes, or (b) if good cause for its exclusion from this Order is shown. Each side shall list all exhibits it intends to offer in its case in chief. The list shall include a description of each exhibit. All exhibits shall be pre-marked with each exhibit bearing a unique number or letter (numbers for Plaintiffs and Participating Unitholders, and letters for GUC Trust and New GM), with the prefix PX for Plaintiffs' and Participating Unitholders' exhibits and DX for the GUC Trust's and New GM's exhibits. Three copies of each exhibit shall be delivered to chambers with the proposed pretrial conference order.

VIII. STIPULATIONS AND OBJECTIONS WITH RESPECT TO EXHIBITS

The Plaintiffs' and the Participating Unitholders' stipulations and objections to the GUC Trust's and New GM's exhibit list are listed in Exhibit F to this Order. The GUC Trust's and New GM's stipulations and objections to Plaintiffs' and Participating Unitholders' exhibit list are listed in Exhibit G to this Order. Any objections not set forth herein will be considered waived absent good cause shown.

IX. PLAINTIFFS' AND PARTICIPATING UNITHOLDERS' WITNESS LIST

The Plaintiffs' and the Participating Unitholders' fact witnesses who will testify live at trial are:

1. Beth Andrews
2. Daniel Golden
3. Keith Martorana
4. Howard Steel
5. David Vanaskey
6. William Weintraub
7. Edward Weisfelner
8. Matthew Williams

X. GUC TRUST'S AND NEW GM'S WITNESS LIST

The GUC Trust's and New GM's fact witnesses who will testify live at trial are:

1. Beth Andrews
2. Matthew Williams

The witnesses listed may be called at trial. No witness not identified herein shall be permitted to testify in either party's case in chief absent good cause shown. Each party shall list the witnesses it intends to call in its case in chief and, if a witness's testimony will be offered by

deposition, shall designate by page and line numbers the portions of the deposition transcript it intends to offer. Each party shall set forth any objections it has to deposition testimony designated by the other and the basis therefor.

The Parties' deposition designations are attached as the following exhibits to this Order. For each witness, the below-listed exhibits contain a list of the designations and counter-designated testimony of Plaintiffs' and the Participating Unitholders' on the one hand, and the GUC Trust and New GM on the others and their respective objections. Highlighted copies of each transcript have also been provided for the convenience of the Court. Plaintiffs' and the Participating Unitholders' designations are highlighted in green; the GUC Trust's and New GM's designations and counter-designations are highlighted in yellow.

- Beth Andrews Deposition (Exhibit H)
- James Barton Deposition (Exhibit I)
- Daniel Golden Deposition (Exhibit J)
- Keith Martorana Deposition (Exhibit K)
- Melanie Mosley Deposition (Exhibit L)
- Howard Steel Deposition (Exhibit M)
- William Weintraub Deposition (Exhibit N)
- Edward Weisfelner Deposition (Exhibit O)
- Matthew Williams Deposition (Exhibit P)

XI. RELIEF SOUGHT

The Plaintiffs and the Participating Unitholders request an Order from the Court concluding that (i) the Plaintiffs' Settlement Agreement is binding, (ii) WTC is responsible for the fees and expenses incurred in connection with this matter (without recourse to the GUC

Trust),⁶ and (iii) New GM has no standing to challenge the binding nature of the Plaintiffs' Settlement Agreement. The GUC Trust and New GM request an Order from the Court concluding that the Plaintiffs' Settlement Agreement is not binding. New GM further requests an Order from the Court that New GM has standing to participate in any and all aspects of Phase 1.

Dated: New York, New York
December 11, 2017

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⁶ The GUC Trust objects to Plaintiffs' and the Participating Unitholders' request for attorneys' fees in the JPTO on the grounds that, among other things (i) it is a procedurally improper request because neither Plaintiffs' Enforcement Motion nor the Participating Unitholders' Joinder thereto, nor any other pleading to date from either of these parties, included a request for attorneys' fees and expenses; (ii) should these parties seek to move for fees and expenses, they should do so in a properly filed motion, and this relief should not be requested for the first time in the JPTO; (iii) the Participating Unitholders' have no standing to request attorneys' fees or expenses from the GUC Trust—much less Wilmington Trust Company as the GUC Trust Administrator—in connection with their Joinder or otherwise; and (iv) in any event, such a request is inconsistent with, and impermissible under, the express terms of the Second Amended and Restated Motors Liquidation Company GUC Trust Agreement, dated July 30, 2015, which among other things limits Wilmington Trust Company's liability as the GUC Trust Administrator "[t]o the fullest extent permitted by applicable law" and mandates that "[n]o provision of the Plan, Confirmation Order, Liquidation Order or this Trust Agreement shall be construed as requiring the GUC Trust Administrator to . . . incur any personal financial liability (x) in the performance of any of its duties thereunder or hereunder . . . , or (y) in the exercise of any of its rights or powers afforded hereunder or thereunder."

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Counsel to New GM

IT IS SO ORDERED.

Dated: December 11, 2017
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

EXHIBIT A

In re: MOTORS LIQUIDATION COMPANY, et al., f/k/a General Motors Corp., et al.,
Case No. 09-50026 (S.D.N.Y. Bankr.)

EXHIBIT A TO JOINT PRE-TRIAL ORDER: JOINT STIPULATION OF FACTS¹

I. THE PLAINTIFFS' SETTLEMENT AGREEMENT

1. The document entitled "Settlement Agreement" which appears annexed as Exhibit H to the Declaration of Edward Weisfelner appearing at Dkt. No. 14061-1 (for definitional purposes only the "**Plaintiffs' Settlement Agreement**") reflects the terms of the agreement to which Plaintiffs (and the Unitholders) seek to bind the GUC Trust.

2. The Plaintiffs' Settlement Agreement references certain documents ("**Settlement Documents**") that are (collectively): (a) the Claims Estimate Order, which appears as Exhibit J to the Declaration of Edward Weisfelner; (b) a motion to approve the settlement and estimate the aggregate allowed unsecured claims against the Old GM estate pursuant to Bankruptcy Rule 9019, which appears as Exhibit K to the Declaration of Edward Weisfelner; (c) drafts of supporting declarations from Beth Andrews of Wilmington Trust Company as trustee for and administrator of the GUC Trust, and from counsel to the parties, which appear as Exhibits L-O to the Declaration of Edward Weisfelner; (d) a Notice Procedures motion, which appears as Exhibit P to the Declaration of Edward Weisfelner; (e) short- and long-form notice to Plaintiffs, and notice to Unitholders, which appear as Exhibits Q-S to the Declaration of Edward Weisfelner; and (f) a declaration from the notice provider, which appears as Exhibit B to the Declaration of Edward Weisfelner.

3. In or around May 2017, counsel to the Plaintiffs, the Participating Unitholders and the Wilmington Trust Company ("**Wilmington Trust**"), as trustee for and administrator of the

¹ Unless otherwise defined, all capitalized terms used herein shall have the meaning ascribed to them in the Joint Pre-Trial Order filed herewith.

GUC Trust, began negotiating the contours of a potential settlement between Plaintiffs and GUC Trust.

4. On or about June 9, 2017, a draft of the Plaintiffs' Settlement Agreement appearing at AG0005147-5184 was circulated to counsel for certain of the Signatory Plaintiffs containing comments from both Gibson Dunn (counsel for the GUC Trust) and Akin Gump (counsel for the Participating Unitholders) (the "**June 9 Draft**").

5. The GUC Trust authorized its attorneys at Gibson Dunn & Crutcher ("**counsel for GUC Trust**"), including Keith Martorana, Matthew Williams and Gabriel Gillett, to participate in negotiations with the Plaintiffs' counsel and the Participating Unitholders' counsel concerning the Plaintiffs' Settlement Agreement.

6. On August 9, 2017, Daniel Golden, counsel for the Participating Unitholders, reported to counsel to Plaintiffs and counsel to the GUC Trust, that he had notified counsel for New GM of the parties' desire to have a chambers conference with the Bankruptcy Court regarding the proposed settlement the following week, and had committed to providing counsel for New GM a copy of Plaintiffs' Settlement Agreement and Settlement Documents.

7. The GUC Trust has never made a filing with the Securities and Exchange Commission stating it reached a final and binding settlement with any of the Plaintiffs.

8. Beth Andrews was the Wilmington Trust employee with primary responsibility for the GUC Trust during the period June through August 2017. Mr. Vanaskey, an Administrative Vice President at Wilmington Trust, also had responsibility for the GUC Trust during this period.

9. No Plaintiff or counsel to any Plaintiff ever spoke directly with Beth Andrews, David Vanaskey, or any other employee of Wilmington Trust with responsibility for the GUC Trust concerning the Plaintiffs' Settlement Agreement.

10. On August 14, 2017, a meeting between counsel for the GUC Trust and counsel for New GM was scheduled. This meeting occurred on August 15, 2017 at 10:00 a.m.

11. At approximately 9:40 a.m. on August 16, 2017, counsel for the GUC Trust contacted counsel for the Participating Unitholders to request a telephonic conference. That conference call occurred at 11:30 a.m. that day, during which counsel for Wilmington Trust notified counsel for the Participating Unitholders that the GUC Trust would not proceed with Plaintiffs' Settlement Agreement and would instead enter into an agreement with New GM. That afternoon, counsel for Wilmington Trust notified counsel for the Plaintiffs that the GUC Trust would not proceed with Plaintiffs' Settlement Agreement.

12. On the evening of August 16, 2017, New GM and the GUC Trust notified the Bankruptcy Court by joint letter that the GUC Trust decided to enter into "a proposed settlement agreement with New GM that will be subject to this Court's approval."

II. AUTHENTICITY OF DOCUMENTS

13. All documents produced in discovery by any Party in this Dispute, including any true and correct copy thereof, are authentic for purposes of Federal Rule of Evidence 901.

EXHIBIT B

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

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

Plaintiffs' and Participating Unitholders' Contentions are organized as follows:

- I. Reservation Of Rights.
- II. Overview.
 - A. Phase 1(a) Issue.
 - B. Phase 1(b) Issue.
- III. Burden Of Proof.
 - A. Phase 1(a) Issue.
 - B. Phase 1(b) Issue.
- IV. Factual Contentions.
 - A. Initial Proceedings In The Bankruptcy Court And Second Circuit.
 - B. Proceedings In The Bankruptcy Court On Remand.
 - C. The Settlement Negotiations.
 - 1. June To July, 2017 Drafting History And Agreement On Material Terms.
 - 2. Evidence In Support Of The Claims Estimate Order.
 - 3. Pursuing A Staged Settlement And Binding Absentee Claimants.
 - D. Finalizing The Settlement Agreement And Informing New GM.
 - E. The GUC Trust Abandons The Settlement.
 - F. Representational Authority.

- V. The Settlement Is Binding On The GUC Trust.
 - A. The Parties Reached Agreement On All Materials Terms.
 - B. The GUC Trust Did Not Express An Explicit Reservation Of The Right Not To Be Bound Absent A Signature.
 - C. There Was Partial Performance Of The Settlement Agreement.
 - D. The Settlement Agreement Was Reduced To Writing And Enforcing The Settlement Agreement Does Not Run Afoul of CPLR 2104.
- VI. New GM Does Not Have Phase I Standing.
- VII. The Signatory Plaintiffs Are Entitled To Attorneys' Fees.

I. Reservation Of Rights.

1. Set forth below is a non-exhaustive statement of the Signatory Plaintiffs' and Participating Unitholders' contentions as to the ultimate issues of fact and law to be tried. The statement is not intended to waive any rights.

II. Overview.

A. Phase 1(a) Issue.

2. Settlements are favored in bankruptcy, so much so that each Circuit pays homage to the strong bankruptcy policy in favor of speedy, inexpensive, negotiated resolution of disputes. See, e.g., Tronox Worldwide LLC v. Kerr-McGee Corp. (In re Tronox Inc.), 855 F.3d 84, 106 (2d Cir. 2017); Munford v. Munford, Inc. (In re Munford, Inc.), 97 F.3d 449, 455 (11th Cir. 1996). "Settlement agreements to end litigation are strongly favored by courts and are not lightly cast aside. Once reached by the parties, settlement agreements are binding and enforceable." Delyanis v. Dyna-Empire, Inc., 465 F. Supp. 2d 170, 173 (E.D.N.Y. 2006) (internal citations omitted). Under New York law, the requirements for a binding settlement agreement are "an offer, acceptance, consideration, mutual assent and intent to be bound." Id. Agreements are binding "when the parties have reached complete agreement (including the

agreement to be bound) on all the issues perceived to require negotiation.” Id. The only essential prerequisite for a valid settlement agreement is the parties’ assent to the terms and conditions of the settlement, and the parties’ intent to be bound by it. Id.

3. The Signatory Plaintiffs and the Participating Unitholders will establish at trial that the Settlement is binding on the GUC Trust, and that the GUC Trust’s and New GM’s contention that the Settlement is not binding because the Settlement Agreement was not signed must fail as it would require the Court to ignore the evidence of the parties’ actions and intent. Likewise, the GUC Trust’s contention, hidden from the Signatory Plaintiffs, that it was waiting for the Court to opine on the substance of the Settlement at the August 17 conference before it would sign is neither relevant nor credible.

4. The evidence will show that all parties involved in the lengthy and extensive settlement negotiations agree that the form of the written Settlement Agreement and related documentation was agreed upon no later than August 14, 2017. The Signatory Plaintiffs and Participating Unitholders contend that the following facts to be shown at trial, among other manifestations of mutual assent to be bound that will be introduced at trial, confirm the existence of a Settlement Agreement binding on the GUC Trust:

- On July 27, 2017, Keith Martorana of Gibson Dunn conveyed that the “Settlement Agreement, Settlement Order and Claims estimate order generally look fine from a GDC perspective” and that client sign-off on these three documents “will likely come tomorrow.”¹ The next day, Mr. Martorana recirculated the Settlement Agreement and Settlement Order without any reservation of rights,² and the contemplated client sign-off came on August 14, 2017.³

¹ Direct Testimony of Howard S. Steel (“Steel Testimony”), ¶ 25; PX-032 at BR003277; PX-032 at BR003277.

² Steel Testimony, ¶ 26; PX-034 at BR003354.

³ PX-088.

- On August 9, 2017, with the permission of Gibson Dunn, Daniel Golden of Akin Gump and Ed Weisfelner of Brown Rudnick informed New GM about the Settlement.⁴
- On August 10, 2017, David Vanaskey of Wilmington Trust emailed Beth Andrews of Wilmington Trust an invite to a Corporate Trust Distressed Investing Roundtable regarding “Bankruptcy Rule 9019 settlements: What the indenture trustee needs to know.” Vanaskey wrote: “In light of the Ig Switch settlement may be something worth considering attending. Also Debbie Newman [of Akin Gump] presenting.”⁵
- On August 11, 2017, Co-Lead Counsel Steve Berman previewed certain terms of the settlement in open court at the status conference before Judge Furman in the MDL.⁶ Gibson Dunn attended the MDL status conference telephonically and did not object to or complain about the preview of the Settlement after the status conference.⁷
- An “all hands call” was scheduled for August 11, 2017 “to finalize all of the settlement documentation and motions” by having on the call “the requisite people necessary to bind your respective clients.”⁸ On that call, Gibson Dunn conveyed that they were done with comments to the documents.⁹
- On August 12, 2017, after updated documents were circulating incorporating edits from the all hands call, Keith Martorana of Gibson Dunn confirmed that “[f]rom the GUC Trust perspective, all of the documents sent over by Howie [Steel] (subject to one item we are discussing with Akin in the Settlement Agreement) are fine.” This email did not include any reservation that counsel’s comments were subject to client review or approval.¹⁰ On August 14, 2017, Mr. Martorana confirmed that resolution of that open item had occurred without any reservations.¹¹

⁴ Steel Testimony, ¶ 35; PX-047 at BR007012; Direct Testimony of Edward S. Weisfelner (“Weisfelner Testimony”), ¶ 45.

⁵ PX-051.

⁶ Aug. 11 Hr’g Tr. at 41:16-17.

⁷ Steel Testimony, ¶¶ 38-40; Weisfelner Testimony, ¶ 47.

⁸ Steel Testimony, ¶ 36; PX-047 at BR007012; Weisfelner Testimony, ¶ 46.

⁹ Steel Testimony, ¶ 39; Weisfelner Testimony, ¶ 48.

¹⁰ Steel Testimony, ¶ 43; PX-063 at BR005468.

¹¹ PX-072 at GUC_0007042-43.

- Matt Williams of Gibson Dunn and Beth Andrews of Wilmington Trust both testified in depositions that they had agreed to the terms of the settlement and form of the Settlement documents.¹²
- On August 12, 2017, Keith Martorana of Gibson Dunn circulated a draft of the declaration of Beth Andrews of Wilmington Trust in support of the motion to approve the Settlement Agreement. The declaration states that “the Settlement is a prudent and reasonable exercise of business judgment because it presents the best option for the GUC Trust to maximize recovery for the benefit of the GUC Trust Beneficiaries while minimizing the substantial risk posed by the Late Claims Motions” and “[t]he settlement is in the best interests of the GUC Trust, the Old GM estates and the GUC Trust Beneficiaries.”¹³
- On August 14, 2017, Beth Andrews of Wilmington Trust sent an email to other Wilmington Trust employees to alert them to an article about the Settlement, stating “Entering into the settlement is not an action we have taken without a great deal of thought and guidance from our legal advisors. We believe settling with the plaintiffs is in the best interest of the Trust and will enable us to wind it down and make a final distribution to all of the unitholders sooner rather than later.”¹⁴
- On August 14, 2017, each party provided consent to circulate the Settlement documentation to New GM, including the GUC Trust, without reservation.¹⁵ Before Keith Martorana of Gibson Dunn provided authorization to send the documents to New GM, he informed Wilmington Trust that “FTI has signed off. Is the GUC Trust prepared to sign off? If at all possible, it would be better to send these documents to KS tonight,” and Beth Andrews of Wilmington Trust responded, “yes, I took a look at these before I left the office, *signed off*.”¹⁶
- The parties scheduled the August 17, 2017 conference before Judge Glenn to inform the Court about the existence of the Settlement and discuss the mechanics of the proposed notice procedures.¹⁷

5. The evidence will show that the parties had reached a final agreement on the Settlement no later than August 14, 2017. The GUC Trust and New GM are left to rely

¹² M. Williams Dep. (Vol. 1) at 69:16-70:15, 104:18-105:2; B. Andrews Dep. at 110:2-111:7.

¹³ Steel Testimony, ¶ 44; PX-063 at BR005477 ¶ 28.

¹⁴ PX-066.

¹⁵ Steel Testimony, ¶ 51; PX-077 at BR006006; PX-081 at BR005593; PX-085 at BR005790; PX-089 at BR005545.

¹⁶ PX-088.

¹⁷ Steel Testimony, ¶ 61; PX-105.

exclusively on, and significantly overstate the import of, the boilerplate language in the Settlement Agreement stating that the Agreement “shall become effective and binding on the Parties on the date on which this Agreement is fully executed by each of the Parties.” Under the facts and law, this provision is insufficient to demonstrate an express reservation of rights not to be bound absent a signed, written agreement and is fully belied by the GUC Trust’s objective and clear indication of intent that there was a binding Settlement as of August 14, 2017.

6. The Plaintiffs and Participating Unitholders contend that this Court should find that the Settlement is binding on the GUC Trust under New York law.¹⁸

B. Phase 1(b) Issue.

7. On the Phase 1(b) issue of whether New GM has standing to be heard on the issue of whether the Settlement Agreement is binding, it is undisputed that New GM is neither a party to nor a third-party beneficiary of the Settlement Agreement. As a result, prudential standing limitations bar New GM’s participation in Phase 1. In addition, no direct obligation will be imposed on New GM by any outcome of Phase 1. Accordingly, New GM also does not have constitutional or Bankruptcy Code Section 1109 standing.

8. New GM falsely contends that it is a creditor entitled to standing under Section 1109 of the Bankruptcy Code having filed a proof of claim against the Debtors’ estates. However, that claim was submitted as a contingent administrative claim and was withdrawn from the claims register, so New GM does not have standing under Section 1109. New GM also contends that it has an economic interest at stake in Phase 1 because the Settlement Agreement contemplates notice procedures that may require New GM to provide lists of Plaintiffs’ names and addresses and provides for the parties to seek a Claims Estimate Order that, if approved,

¹⁸ Plaintiffs and the Unitholders incorporate herein their briefing on the pending Motion to Enforce.

would obligate New GM to issue additional shares of New GM common stock. However, neither of these interests is at stake until Phase 2 of the proceedings. Such future, contingent economic interests are insufficient for Phase 1 standing.¹⁹

III. Burden Of Proof.

A. Phase 1(a) Issue.

9. The party seeking to enforce the agreement bears the “burden of demonstrating that the parties had a ‘meeting of the minds’ as to all material terms of a settlement agreement.” Benicorp Ins. Co. v. Nat’l Med. Health Card Sys., Inc., 447 F. Supp. 2d 329, 337 (S.D.N.Y. 2006).

10. If a party takes the position that it did not intend to be bound until it signed a formal document, that party “must prove either that both parties understood they were not to be bound until the executed contract was delivered, or that the other party should have known that the disclaiming party did not intend to be bound before the contract was signed.” Reprosystem, B.V. v. SCM Corp., 727 F.2d 257, 261 (2d Cir. 1984).

11. In cases arising under federal law, the scope of a lawyer’s authority to settle is determined according to federal precedent. In re Artha Mgmt., Inc., 91 F.3d 326, 328-29 (2d Cir. 1996). “[B]ecause of the unique nature of the attorney-client relationship, and consistent with the public policy favoring settlements, [federal courts] presume that an attorney-of-record who enters into a settlement agreement, purportedly on behalf of a client, had authority to do so.” Id. at 329. The party challenging an attorney’s authority to settle bears the burden of proving by affirmative evidence that the attorney lacked authority. Id. (citing U.S. v. Int’l Bhd. of Teamsters, 986 F.2d 15, 20 (2d Cir. 1993)). “The burden of proving that an attorney entered into

¹⁹ Plaintiffs and the Unitholders incorporate herein their briefing on the standing issue.

a settlement agreement without authority is not insubstantial.” Int’l Bhd. of Teamsters, 986 F.2d at 20.

B. Phase 1(b) Issue.

12. “The burden to establish standing remains with the party claiming that standing exists.” Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1092 (2d Cir. 1995); see also FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990) (explaining that the party seeking standing bears the burden of alleging facts demonstrating that he is a proper party to the dispute).

IV. Factual Contentions.²⁰

A. Initial Proceedings In The Bankruptcy Court And Second Circuit.

13. Throughout 2014, New GM issued a multitude of recalls for safety defects, including, among others, recalls related to the Ignition Switch Defect and other defective ignition switches, side airbags, and power steering. After the issuance of these recalls, a number of owners and lessees of defective Old GM and New GM vehicles filed lawsuits against New GM.²¹

14. Many of the cases commenced against New GM were consolidated in a multi-district litigation in the United States District Court for the Southern District of New York before Judge Furman (the “MDL”). Steve W. Berman of Hagens Berman Sobol Shapiro LLP, Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP, and Robert C. Hilliard of Hilliard Martinez Gonzalez, LLP were individually and collectively appointed as Co-Lead Counsel in the MDL on August 15, 2014.²² Mr. Berman and Ms. Cabraser were instructed to

²⁰ The Participating Unitholders do not join in the factual contentions set forth in Sections IV.A and B and VII.

²¹ Weisfelner Testimony, ¶ 3.

²² See Order No. 8, dated Aug. 15, 2014 [MDL ECF No. 249].

focus on Economic Loss Plaintiffs²³ and Mr. Hilliard was instructed to focus on personal injury and wrongful death claimants.²⁴

15. New GM sought to enjoin these lawsuits by filing various motions to enforce the Sale Order in the Bankruptcy Court.²⁵ Co-Lead Counsel retained Brown Rudnick LLP (“**BR**”) and Stutzman, Bromberg, Esserman & Plifka, a Professional Corporation (“**Designated Counsel for the Economic Loss Plaintiffs**”) to handle issues arising in the Bankruptcy Court. Edward S. Weisfelner and Howard S. Steel were the primary partners at BR serving as Designated Counsel for the Economic Loss Plaintiffs. Co-Lead Counsel retained William P. Weintraub of Goodwin Procter LLP to serve as Designated Counsel for the Pre-Closing Accident Plaintiffs with respect to the Four Threshold Issues briefing triggered by the motions to enforce the Sale Order. Mr.

²³ “**Economic Loss Plaintiffs**” is used to collectively refer to the **Ignition Switch Plaintiffs** and **Non-Ignition Switch Plaintiffs**. The term “**Ignition Switch Plaintiffs**” refers to those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with an ignition switch defect included in Recall No. 14V-047 (the “**Ignition Switch Defect**”). The term “**Non-Ignition Switch Plaintiffs**” refers to those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with defects in ignition switches, side airbags or power steering included in Recall Nos. 14V-355, 14V-394, 14V-400, 14V-346, 14V-118, and 14V-153.

²⁴ See Order No. 13, dated Sept. 16, 2014 [MDL ECF No. 304].

²⁵ See *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction*, dated Apr. 21, 2014 [ECF No. 12620]; *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits*, dated Apr. 21, 2014 [ECF No. 12807]. New GM also filed a motion to enforce the sale order with respect to the Non-Ignition Switch Plaintiffs, but adjudication of this motion was deferred pending resolution of the motions to enforce with respect to the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs. *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction (Monetary Relief Actions, Other Than Ignition Switch Actions)*, dated Aug. 1, 2014 [ECF No. 12808]; *In re Motors Liquidation Co.*, 529 B.R. 510, 523 (Bankr. S.D.N.Y. 2015).

Hilliard and his co-counsel Thomas J. Henry also retained Mr. Weintraub to pursue the rights of their individual clients to file late claims.²⁶

16. To resolve the various motions to enforce the Sale Order, the Bankruptcy Court first identified four threshold issues to be determined, including whether any of the claims asserted against New GM were claims against the Motors Liquidation Company GUC Trust (the “**GUC Trust**”) and, if so, whether such claims should “nevertheless be disallowed/dismissed on grounds of equitable mootness” In re Motors Liquidation Co., 529 B.R. 510, 539-40 (Bankr. S.D.N.Y. 2015) (the “**April 2015 Decision**”). The Bankruptcy Court tolled the Ignition Switch Plaintiffs’ time to file late claims against the GUC Trust until final resolution of the four threshold issues, including appeals.²⁷

17. In April and June 2015, the Bankruptcy Court issued its decision and related judgment on these four threshold issues. See In re Motors Liquidation Co., 529 B.R. 510; *Judgment*, dated June 1, 2015 [ECF No. 13177] (the “**June 2015 Judgment**”).

18. Among other things, the Bankruptcy Court held that the Ignition Switch Plaintiffs’ and Ignition Switch Pre-Closing Accident Plaintiffs’²⁸ due process rights were

²⁶ On December 4, 2017, Goodwin Procter filed a *Notice of Withdrawal of Counsel of Record for Certain Movants Under Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths* [ECF No. 14179]. That Notice of Withdrawal informs the Court that Goodwin Procter no longer serves as counsel of record for certain former clients of Hilliard Martinez Gonzales LLP and the Law Offices of Thomas J. Henry and will no longer be pursuing the Late Claims Motion on their behalf.

²⁷ See *Scheduling Order Regarding (I) Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction, (II) Objection Filed by Certain Plaintiffs in Respect thereto, and (III) Adversary Proceeding No. 14-01929*, dated May 16, 2014 [ECF No. 12697] at 3.

²⁸ The term “**Pre-Closing Accident Plaintiffs**” means those plaintiffs asserting personal injury or wrongful death claims or persons who suffered a personal injury or wrongful death arising from an accident involving an Old GM vehicle that occurred prior to the closing of the Section 363 Sale. The Pre-Closing Accident Plaintiffs are comprised of a subset of plaintiffs

violated because Old GM failed to provide them with constitutionally adequate notice of the November 30, 2009 bar date and that failure prejudiced them in filing timely claims. See In re Motors Liquidation Co., 529 B.R. at 525, 574. The Bankruptcy Court recognized that the “obvious” remedy for this due process violation was permitting the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs to file late claims. See id. at 583. These bar date rulings were not appealed.

19. However, the Bankruptcy Court further held that while “late claims filed by the Plaintiffs might still be allowed, assets transferred to the GUC Trust under the Plan could not now be tapped to pay them” pursuant to the doctrine of equitable mootness. See id. at 528-29. According to the Bankruptcy Court, the GUC Trust was “funded by discrete bundles of assets—that had been reserved for identified claims under Old GM’s reorganization plan—with no unallocated assets left for additional claims.” Id. at 592. The Court determined that permitting Plaintiffs’ claims against the GUC Trust would frustrate unitholders’ “legitimate expectations” that the universe of claims could not increase. See id.

20. The Bankruptcy Court certified the April 2015 Decision and June 2015 Judgment for direct appeal to the Second Circuit.²⁹ Among the issues raised on appeal was whether “the Bankruptcy Court err[ed] in applying the doctrine of equitable mootness to the claims of the Ignition Switch Plaintiffs”³⁰

asserting claims or who suffered an injury or death involving an Old GM vehicle with an Ignition Switch Defect (the “**Ignition Switch Pre-Closing Accident Plaintiffs**”). Collectively, the Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs, and Pre-Closing Accident Plaintiffs are the “**Plaintiffs**.”

²⁹ See Order Pursuant to 28 U.S.C. § 158(d), Fed. R. Bankr. P. 8006(e), Certifying Judgment for Direct Appeal to Second Circuit, dated June 1, 2015 [ECF No. 13178].

³⁰ *Appellants’ Statement of Issues on Appeal and Amended Designation of Items to be Included in the Record on Appeal*, dated July 14, 2015 [ECF No. 13299].

21. Prior to and following the issuance of the April 2015 Decision and June 2015 Judgment, Designated Counsel and Co-Lead Counsel focused attention on issues related to the Ignition Switch Plaintiffs' and Non-Ignition Switch Plaintiffs' late claims against the GUC Trust, including (i) the allowance of late claims under the Plan,³¹ the GUC Trust Agreement,³² and the Late Filed Claims Order,³³ and (ii) the structure of Section 3.2 of the Sale Agreement (the "**Accordion Feature**").³⁴

22. The Accordion Feature obligates New GM to issue additional shares of New GM common stock (the "**Adjustment Shares**") if the Bankruptcy Court enters an order estimating the aggregate allowed general unsecured claims against the Old GM estate (a "**Claims Estimate Order**") at an amount exceeding \$35 billion, with a maximum of issuing 30 million shares if the claims estimation is equal to or exceeds \$42 billion. See Sale Agreement § 3.2(c).³⁵

23. Recognizing this potential source of recovery for Plaintiffs' claims, Designated Counsel, with the approval of Lead Counsel in the MDL, began preliminary settlement

³¹ See *Second Amended Joint Chapter 11 Plan*, filed Mar. 18, 2011 [ECF No. 9836].

³² See *Second Amended and Restated Motors Liquidation Company GUC Trust Agreement, dated as of July 30, 2015, by and among Wilmington Trust Company, as trust administrator and trustee of the GUC Trust and FTI Consulting, Inc., as trust monitor of the GUC Trust*, dated as of July 30, 2015 (the "**GUC Trust Agreement**").

³³ See *Order Approving Motion Pursuant to Bankruptcy Rule 3003 and Section 105(a) of the Bankruptcy Code for an Order Disallowing Certain Late Filed Claims*, dated Feb. 8, 2012 [ECF No. 11394] (the "**Late Filed Claims Order**").

³⁴ See *Second 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 (the "**Sale Agreement**").

³⁵ Weisfelner Testimony, ¶ 12.

discussions with the GUC Trust and Participating Unitholders³⁶ and informed the Bankruptcy Court of these discussions at a hearing on July 16, 2015. See July 16, 2015 Hr'g Tr. at 30:6-9.

24. As was explained to the Bankruptcy Court, Designated Counsel were contemplating a mechanism by which, if Plaintiffs' claims were of a sufficient amount to trigger the Accordion Feature, Plaintiffs would obtain exclusive rights to the Adjustment Shares and would release all claims to current GUC Trust Assets and past distributions of GUC Trust Assets. See id. 38:19-39:13.³⁷

25. The parties to these discussions were also considering whether to wait to address class issues until after the Accordion Feature was triggered or pursue class certification for settlement purposes. See id. at 44:23-46:6. Ultimately, these discussions in 2015 ended without a settlement.³⁸

26. In June 2015, in an effort to preserve GUC Trust Assets for potential late claims, certain Plaintiffs sought to stay distributions of the GUC Trust's assets pending the appeal of the April 2015 Decision and June 2015 Judgment.³⁹ Following an evidentiary hearing, the

³⁶ The "**Participating Unitholders**" are holders of approximately 65% of the GUC Trust Units outstanding.

³⁷ Weisfelner Testimony, ¶ 13.

³⁸ Weisfelner Testimony, ¶ 13.

³⁹ See *The Ignition Switch Plaintiffs' and Certain Non-Ignition Switch Plaintiffs' Request for a Stay of Distributions of GUC Trust Assets and Response to Motion of Wilmington Trust Company, as GUC Trust Administrator and Trustee, for an Order Granting Authority (A) to Exercise New GM Warrants and Liquidate New GM Common Stock and (B) to Make Corresponding Amendments to the GUC Trust Agreement*, dated June 24, 2015 [ECF No. 13246]; *Joinder of the Ignition Switch Pre-Closing Accident Plaintiffs to the Ignition Switch Plaintiffs' and Certain Non-Ignition Switch Plaintiffs' Request for a Stay of Distributions of GUC Trust Assets and Response to Motion of Wilmington Trust Company, as GUC Trust Administrator and Trustee, for an Order Granting Authority (A) to Exercise New GM Warrants and Liquidate New GM Common Stock and (B) to Make Corresponding Amendments to the GUC Trust Agreement and Request for Stay of Distributions of GUC Trust Assets*, dated June 24, 2015 [ECF No. 13248].

Bankruptcy Court ultimately granted the request for a stay, subject to the posting of a \$10.6 million bond. See Decision and Order on Request for Stay, dated Oct. 14, 2015 [ECF No. 13501]. However, because the Plaintiffs could not post the requisite bond, the stay was never effectuated.⁴⁰

27. In July 2016, the Second Circuit issued its opinion on the appeal of the April 2015 Decision and June 2015 Judgment. See Elliott v. General Motors LLC (In re Motors Liquidation Co.), 829 F.3d 135, 166 (2d Cir. 2016). Among other things, the Second Circuit vacated the Bankruptcy Court's equitable mootness ruling as advisory. Id. at 169.⁴¹

B. Proceedings In The Bankruptcy Court On Remand.

28. Thereafter, the Bankruptcy Court entered an Order to Show Cause setting forth issues to be addressed by the Bankruptcy Court on remand (the "**2016 Threshold Issues**") and the procedures for resolving the 2016 Threshold Issues.⁴² One 2016 Threshold Issue is whether Ignition Switch Plaintiffs and/or Non-Ignition Switch Plaintiffs could satisfy the requirements for authorization to file late proof(s) of claim against the GUC Trust and whether such claims are equitably moot (the "**Late Proof of Claim Issue**").⁴³

29. With respect to the Late Proof of Claim Issue, the Bankruptcy Court ordered Brown Rudnick LLP and Goodwin Procter LLP, on behalf of their respective clients, to file motions seeking authority to file late proof(s) of claim (collectively, the "**Late Claim Motions**") with draft proofs of claim by December 22, 2016. See Order to Show Cause at 5 ¶ 1. The

⁴⁰ Weisfelner Testimony, ¶ 14.

⁴¹ Weisfelner Testimony, ¶ 15.

⁴² *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")*, dated Dec. 13, 2016 [ECF No. 13802] (the "**Order to Show Cause**").

⁴³ Weisfelner Testimony, ¶ 16.

Bankruptcy Court instructed that the Late Claim Motions should only address the authority to file late proof(s) of claim and should not address other issues, such as whether a class proof of claim can be filed, class certification, discovery, or the merits of any late proof(s) of claim. See id. The Bankruptcy Court further instructed that briefing on the adjudication of any Late Claim Motions filed by Non-Ignition Switch Plaintiffs would be stayed pending resolution of the other 2016 Threshold Issues. See id. at 5 ¶ 2.⁴⁴

30. As directed by the Bankruptcy Court, Brown Rudnick assisted Co-Lead Counsel, on behalf of the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs, in filing a Late Claim Motion on December 22, 2016, attaching proposed class proofs of claim asserted on behalf of proposed class representatives for the Ignition Switch Plaintiffs and Non-Ignition Switch Plaintiffs (the “**Proposed Class Claims**”).⁴⁵ Goodwin Procter also filed a Late Claim Motion on behalf of certain Ignition Switch Pre-Closing Accident Plaintiffs.^{46/47}

31. The Proposed Class Claims allege that Old GM knew of the Ignition Switch Defect, other ignition switch defects, defects in side airbags, and defects in power steering for years prior to the bar date and concealed the existence of these defects, causing Economic Loss Plaintiffs to overpay for defective vehicles and bear the costs of repairs while Old GM reaped the

⁴⁴ Weisfelner Testimony, ¶ 17.

⁴⁵ See Motion for an Order Granting Authority to File Late Class Proofs of Claim, dated Dec. 22, 2016 [ECF No. 13806] (“Plaintiffs’ Late Claim Motion”).

⁴⁶ See Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths, dated December 22, 2016 [ECF No. 13807] (“Pre-Closing Accident Plaintiffs’ Late Claim Motion”). The Groman Plaintiffs and certain other plaintiffs represented by Gary Peller filed joinders to the late claims motions. In July and August 2017, certain Ignition Switch Pre-Closing Accident Plaintiffs represented by Andrews Myers, P.C. filed late claims motions.

⁴⁷ Weisfelner Testimony, ¶ 18.

benefit of selling defective vehicles at inflated prices and avoiding the costs of recall.⁴⁸ Based on these allegations, the Ignition Switch Plaintiffs and Non-Ignition Switch Plaintiffs assert claims against the GUC Trust/Old GM estate under the laws of each of the 50 states and the District of Columbia for: (i) fraudulent concealment; (ii) unjust enrichment; (iii) consumer protection claims; (iv) breach of implied warranty of merchantability; and (v) negligence.^{49/50}

32. Thereafter, the parties participated in two status conferences before the Bankruptcy Court, engaged in preliminary discovery, and filed briefs addressing two preliminary issues raised in the Late Claim Motions: (i) whether relief can be granted absent a showing of excusable neglect under the so-called Pioneer⁵¹ factors; and (ii) the applicability of any purported agreements with the GUC Trust or other tolling arrangements to toll timeliness objections (the “**Initial Late Claim Motions Issues**”).^{52/53}

33. In connection with the filing of the Late Claim Motions and the briefing on the Initial Late Claim Motions Issues, discussions to settle Plaintiffs’ claims against the GUC Trust

⁴⁸ Exhibit A to Plaintiffs’ Late Claim Motion ¶¶ 9-258, 332; Exhibit B to Plaintiffs’ Late Claim Motion ¶¶ 9-146, 249.

⁴⁹ Proposed Ignition Switch Class Claim ¶¶ 316-418; Proposed Non-Ignition Switch Class Claim ¶¶ 233-337.

⁵⁰ Weisfelner Testimony, ¶ 19.

⁵¹ Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 395 (1993).

⁵² See *Order Establishing, Inter Alia, Briefing Schedule for Certain issues Arising from Late Claim Motions Filed by Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs and Certain Ignition Switch Pre-Closing Accident Plaintiffs*, dated Mar. 2, 2017 [ECF No. 13869]; *Opening Brief by General Motors LLC with Respect to Initial Late Claim Motions Issues*, dated Mar. 6, 2017 [ECF No. 13871]; *The Ignition Switch Plaintiffs’ Brief on the Initial Late Claim Motions Issues*, dated Mar. 6, 2017 [ECF No. 13872]; *Opening Brief of GUC Trust Administrator and Participating Unitholders on the Applicability of Pioneer and Tolling to Plaintiffs’ Motions to File Late Claims*, dated Mar. 6, 2017 [ECF No. 13873]; *Brief on Applicability of Pioneer and Tolling Issues in Connection with Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths*, dated Mar. 6, 2017 [ECF No. 13874].

⁵³ Weisfelner Testimony, ¶ 20.

were renewed. Accordingly, at the May 17, 2017 hearing on the other 2016 Threshold Issues, Designated Counsel conveyed to the Court that there were active settlement discussions between certain Plaintiffs, the GUC Trust, and the Participating Unitholders that might obviate the need for oral argument on the Initial Late Claim Motions Issues. See Hr’g Tr. at 266:12-19.^{54/55} A hearing on the Initial Late Claims Motions Issues has not been scheduled.

C. The Settlement Negotiations.

34. Settlement discussions began between Designated Counsel and Co-Lead Counsel on behalf of the Economic Loss Plaintiffs, on the one hand, and Akin Gump Strauss Hauer & Feld LLP on behalf of Participating Unitholders, on the other. After Designated Counsel created the general settlement structure, Gibson Dunn & Crutcher LLP, on behalf of the GUC Trust, and Hilliard Martinez Gonzalez, LLP, the Law Offices of Thomas J. Henry and Goodwin Procter LLP, on behalf of certain Pre-Closing Accident Plaintiffs represented by those firms (the “**Initial Pre-Closing Accident Plaintiffs**”), were brought into the settlement discussions.^{56/57}

35. In creating a settlement structure, Plaintiffs’ Counsel relied upon the GUC Trust’s exclusive authority to object to, resolve and seek estimation of Plaintiffs’ claims.⁵⁸ In addition,

⁵⁴ Letters conveying that settlement discussions were ongoing and that a hearing on the Initial Late Claims Motions Issue should not be scheduled were filed on June 16, June 30, and August 4, 2017. See *Letter re: Status of Settlement Discussions*, dated June 16, 2017 [ECF No. 13962]; *Letter re: Status of Settlement Discussions*, dated June 30, 2017 [ECF No. 13981]; *Letter re: Status of Settlement Discussions*, dated Aug. 4, 2017 [ECF No. 14027].

⁵⁵ Weisfelner Testimony, ¶ 21; PX-004 at BR002322.

⁵⁶ In August 2017, following discussions with the GUC Trust, certain Pre-Closing Accident Plaintiffs represented by Andrews Myers (the “**Additional Pre-Closing Accident Plaintiffs**”) agreed to become signatories to the Settlement Agreement as written.

⁵⁷ Weisfelner Testimony, ¶ 22.

⁵⁸ See Plan § 7.3 (“[T]he GUC Trust Administrator . . . may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claims pursuant to section 502(c) of the Bankruptcy Code”); GUC Trust Agreement § 5.1(a) (“[O]bjections to, and requests for estimation of Disputed General Unsecured Claims against the Debtors may be

Plaintiffs' Counsel relied upon the GUC Trust's responsibility to request that New GM fulfill its obligation under the Sale Agreement to issue Adjustment Shares if the Accordion Feature were triggered.^{59/60}

36. The basic structure of the contemplated settlement to resolve contested issues between the Plaintiffs and the GUC Trust was for the Plaintiffs to waive their ability to: (i) stay distributions from the GUC Trust; (ii) obtain priority on future distributions from the GUC Trust; and (iii) claw-back prior distributions to Unitholders. In exchange, the GUC Trust would pay a "Settlement Amount," pay reasonable costs and expenses for providing notice of the settlement, and support entry of a Claims Estimate Order that would trigger New GM's obligation to issue the maximum amount of Adjustment Shares. The Settlement Amount and Adjustment Shares would be placed in a Settlement Fund for the exclusive benefit of Plaintiffs.⁶¹

37. After reaching a consensus regarding the basic structure of the contemplated settlement, on June 6, 2017, Howard Steel of Brown Rudnick sent Naomi Moss of Akin Gump an initial draft of the Settlement Agreement. Between June 6, 2017 (when the initial draft of the Settlement Agreement was sent to the GUC Trust) and August 14, 2017 (when the final Settlement Agreement was provided to New GM), the parties exchanged versions of the Settlement Agreement approximately twenty-one times.⁶² As discussed in detail below and as

interposed and prosecuted only by the GUC Trust Administrator."); GUC Trust Agreement §5.1(d) ("[T]he GUC Trust Administrator shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to Disputed General Unsecured Claims against the Debtors . . ."); GUC Trust Agreement § 5.1(e) ("The GUC Trust Administrator may at any time request that the Bankruptcy Court estimate any contingent claim, unliquidated claim or Disputed General Unsecured Claim pursuant to Section 502(c) of the Bankruptcy Code . . .").

⁵⁹ See GUC Trust Agreement § 2.3(d).

⁶⁰ Weisfelner Testimony, ¶ 23.

⁶¹ Weisfelner Testimony, ¶ 24.

⁶² Weisfelner Testimony, ¶ 25; PX-005 at BR007564; Steel Testimony, ¶ 13.

the evidence will show, in the course of settlement negotiations, the parties focused on certain key issues, such as the settlement amount, evidence supporting the claims estimate order, staging the settlement, and binding the absentee claimants pursuant to a well noticed Bankruptcy Rule 9019 settlement.

38. The evidence will show that at no point during the negotiation of the settlement documents did the GUC Trust or its counsel indicate to any Plaintiffs' representative that the GUC Trust's approval of the settlement would not be final or binding until the Settlement Agreement was signed beyond inclusion of boilerplate language in an early draft of the Settlement Agreement. Nor did the GUC Trust or its counsel indicate to any Plaintiffs' representative that the GUC Trust's approval of the settlement would not be final or binding until the Settlement Agreement was previewed with the Bankruptcy Court.⁶³

**1. June To July, 2017 Drafting History
And Agreement On Material Terms.**

39. On June 9, 2017, Naomi Moss of Akin Gump provided Brown Rudnick with the collective comments of Akin Gump and Gibson Dunn to the initial draft of the Settlement Agreement. This draft maintained the general structure of the Settlement. The main revisions included editing the definition of Plaintiffs to ensure the waiver provision would cover absentee claimants, adding the concept of a notice cost cap over which Plaintiffs would cover the cost of notice of the Settlement Motion, and expanding the waiver provision to include a waiver of any claims to assets of the Motors Liquidation Company Avoidance Action Trust.⁶⁴

40. In this draft, Akin Gump and Gibson Dunn added boilerplate language that the Settlement Agreement "shall become effective and binding on the Parties on the date on which

⁶³ Weisfelner Testimony, ¶ 26; Direct Testimony of William P. Weintraub ("Weintraub Testimony"), ¶ 15.

⁶⁴ Steel Testimony, ¶ 14; PX-006 at BR004584.

this Agreement is fully executed by each of the Parties.” This language was never discussed by the parties and neither Gibson Dunn nor Akin Gump discussed with Plaintiffs any reservation, express or otherwise, that the Settlement Agreement could not be binding until signatures were placed on the document.⁶⁵

41. Over the next month, up to and including July 18, 2017, the parties exchanged approximately eight mark-ups of the Settlement Agreement attached to emails containing boilerplate reservations that the drafts were subject to the ongoing review of co-counsel and/or clients. None of the emails specified that signatures were required before the Settlement would be binding.⁶⁶

42. At this point, on July 18, Bill Weintraub of Goodwin Procter suggested that the parties “convene a call to discuss some of the points that seem stalled so we can discuss our respective concerns.” That call took place the next day, July 19, 2017, after which, on July 20, 2017, Keith Martorana of Gibson Dunn circulated “revised versions of the settlement agreement which reflects the group’s discussion yesterday” “being sent contemporaneously to our clients and remains subject to their ongoing review and comment.”⁶⁷

43. By July 20, 2017, several key issues had been resolved. One key issue resolved was the Settlement Amount. The initial June 6 draft of the Settlement Agreement by Brown Rudnick proposed a Settlement Amount of \$15 million. The July 5, 2017 version of the Settlement Agreement drafted by the GUC Trust and Participating Unitholders kept the \$15 million proposal, but added brackets around the \$15 million figure. The brackets were removed

⁶⁵ Steel Testimony, ¶¶ 15-16; PX-006 at BR004584.

⁶⁶ Steel Testimony, ¶ 17; PX-008 at BR004675; PX-009 at BR004761; PX-011 at BR003749; PX-013 at BR004460; PX-017 at BR002330; PX-019 at BR002573); PX-020 at BR002622; PX-021 at BR002669.

⁶⁷ Steel Testimony, ¶ 18; PX-021 at BR002669; PX-026 at BR002969.

in the July 20, 2017 version of the Settlement Agreement drafted by the GUC Trust and Participating Unitholders.⁶⁸

44. Another issue resolved was whether to require side letters from Gary Peller and Golenbock, Wolf, Holdstein stating that they would not object to the settlement. By July 20, 2017, the parties had decided not to include a side letter requirement.⁶⁹

45. An additional issue discussed was the timing of the waivers in the Settlement Agreement. By the July 20, 2017 version of the Settlement Agreement drafted by the GUC Trust and Participating Unitholders, the parties had agreed that the Plaintiffs' waiver of rights to current and past distributions of GUC Trust Assets and the GUC Trust's and related parties' waiver of rights to the Settlement Amount would be effective upon the Settlement Order becoming a final order and payment of the Settlement Amount. The GUC Trust's and related parties' waiver of rights to the Adjustment Shares would be effective upon the Settlement Order becoming a final order, payment of the Settlement Amount, and entry of the Claims Estimate Order. In addition, the GUC Trust had the ability to waive the final order requirement in these waivers.⁷⁰

46. The parties also discussed the amount of the notice cost cap (with proposals ranging from \$6 million to \$5 million) and whether amounts over the cap would be deducted from the Settlement Amount or covered by the Signatory Plaintiffs. In connection with these discussions, on June 11, 2017, Brown Rudnick sent Akin Gump an email detailing preliminary views on the cost of sending postcard notice to Plaintiffs to be shared with Gibson Dunn. About

⁶⁸ Weisfelner Testimony, ¶ 27; PX-005 at BR007564-7578; PX-013 at BR004491; PX-026 at BR003004; Steel Testimony, ¶ 19.

⁶⁹ Steel Testimony, ¶ 20; PX-021 at BR002669; PX-026 at BR003004.

⁷⁰ Steel Testimony, ¶ 21; PX-013 at BR004460; PX-017 at BR002330; PX-019 at BR002573; PX-021 at BR002669; PX-026 at BR003004; PX-029 at BR003073.

a month later, on July 12, Brown Rudnick sent Akin Gump and Gibson Dunn illustrative notice plans with projected costs. On July 20, 2017, the notice cost cap amount was set at \$5 million; however, this amount was increased during further negotiations in August.⁷¹

47. Around this time, the parties began making progress on drafting: (i) the two orders to be attached to the Settlement Agreement—the Settlement Order and Claims Estimate Order; and (ii) the two motions referenced in and required to implement the Settlement Agreement—the Settlement Motion and the motion seeking approval of notice procedures. On June 27, 2017, Keith Martorana of Gibson Dunn circulated the initial draft of the Settlement Order. On July 19, 2017, Brown Rudnick circulated initial drafts of the Claims Estimate Order and Settlement Motion. A few days later, on July 25, 2017, Brown Rudnick circulated initial drafts of the motion seeking approval of notice procedures and accompanying proposed long- and short-form of notice to Plaintiffs.⁷²

48. On July 25, 2017, Brown Rudnick circulated a draft of the Settlement Agreement revising the notice provision to provide notice to individuals who owned or leased recalled vehicles on or before November 30, 2009 (the bar date), rather than July 10, 2009 (the closing date), and on July 26, 2017, Brown Rudnick circulated “light comments” to the Settlement Order and Claims Estimate Order.⁷³

49. In response, on July 27, 2017, Keith Martorana of Gibson Dunn conveyed that the “Settlement Agreement, Settlement Order and Claims estimate order generally look fine from a GDC perspective (and client sign-off is pending),” but inquired why the notice date was

⁷¹ Steel Testimony, ¶ 22; PX-008 at BR004675; PX-013 at BR004460; PX-019 at BR002573; PX-020 at BR002622; PX-007 at BR004622; PX-016 at BR002323; PX-026 at BR003004.

⁷² Steel Testimony, ¶ 23; PX-010 at BR004718; PX-025 at BR002908; PX-029 at BR003073.

⁷³ Steel Testimony, ¶ 24; PX-029 at BR003073; PX-030 at BR003211.

switched from the closing date to the bar date. Brown Rudnick agreed to Gibson Dunn's one edit, responding, "Please use 7/10," and asked whether Keith Martorana had obtained "client sign off." Keith Martorana circulated the Settlement Agreement "incorporating that change" of using 7/10 and answered that:

I had a lengthy conversation with our client today, and they are discussing internally. Sign-off, with respect to the three documents (Settlement Agreement, Settlement Order, Claims Estimate Order) will likely come tomorrow. We'll keep you posted. Note, however, that sign-off on the settlement itself is subject to the finalization of all other document in a satisfactory manner and receipt of final approvals.^{74]}

50. The following day, on July 28, 2017, Keith Martorana of Gibson Dunn recirculated the Settlement Agreement with "one change requested by [Brown Rudnick]" clarifying a factual issue in the preamble and circulated the Settlement Order adding one sentence requested by Goodwin Procter reiterating that the Settlement was not intended to impair claims that Plaintiffs may have against New GM. This email contained no reservation of rights.⁷⁵

51. After Bill Weintraub requested "a minor edit" to the definition of "PIWD Plaintiffs" in the Settlement Agreement, on August 2, 2017, Keith Martorana of Gibson Dunn agreed that "[t]his change is fine" and circulate a revised version of the Settlement Agreement with this change, again with no reservation of rights.⁷⁶

2. Evidence In Support Of The Claims Estimate Order.

52. To enable the GUC Trust to support entry of the Claims Estimate Order, the Economic Loss Plaintiffs and Initial Pre-Closing Accident Plaintiffs provided the GUC Trust

⁷⁴ Steel Testimony, ¶ 25; PX-032 at BR003277.

⁷⁵ Steel Testimony, ¶ 26; PX-034 at BR003354.

⁷⁶ Steel Testimony, ¶ 27; PX-038 at BR006092.

with separate proffers of evidence and expert reports describing in detail the alleged viability of the asserted claims, the alleged violation of due process rights of Non-Ignition Switch Plaintiffs in connection with the bar date and the alleged amount of damages.⁷⁷

53. On May 9, 2017, Howard Steel of Brown Rudnick provided an initial proffer of evidence and an expert report on the Economic Loss Plaintiffs' claims to Akin Gump to be shared with Gibson Dunn and an updated version of the proffer of evidence to Akin Gump and Gibson Dunn on July 13, 2017. The proffer of evidence sets forth the factual background for the Economic Loss Plaintiffs' claims, the violation of due process rights in connection with the Bar Date, and the amount of damages alleged. The report by Stephen Boedeker, an expert on surveys and statistical sampling, analyzes the Plaintiffs' damages claims based on a conjoint analysis conducted by Mr. Boedeker as managing director of Berkley Research Group.⁷⁸

54. On July 11, 2017, Bob Hilliard of Hilliard Martinez Gonzalez, LLP provided materials describing the personal injury and wrongful death claims of the Initial Pre-Closing Accident Plaintiffs and demonstrating the alleged value of these claims based on exemplar verdict amounts. The valuation of damages was assessed and approved by W. Mark Lanier, an experienced trial attorney recognized as a leader in the field.⁷⁹

55. The valuation of the Economic Loss Plaintiffs' and Initial Pre-Closing Accident Plaintiffs' claims set forth in the proffered evidence is well in excess of the amount necessary to

⁷⁷ Weisfelner Testimony, ¶ 28.

⁷⁸ Weisfelner Testimony, ¶ 29; PX-002 at BR001936; PX-018 at BR002373; Steel Testimony, ¶ 7.

⁷⁹ Weisfelner Testimony, ¶ 30; PX-015 at BR000359; Steel Testimony, ¶ 8.

trigger New GM's obligation to issue the maximum amount of Adjustment Shares under the Accordion Feature of the AMSPA.⁸⁰

56. As set forth in the Settlement Agreement, the GUC Trust's independent review of this evidence, among other things, formed the basis of its agreement to support entry of the Claims Estimate Order.⁸¹

3. Pursuing A Staged Settlement And Binding Absentee Claimants.

57. Another point of discussion among the parties concerned two related open issues raised by Akin Gump and Gibson Dunn that were resolved in the course of negotiations—creating a staged settlement process and binding absentee claimants.⁸²

58. The Settlement Agreement requires the parties to file a Settlement Motion seeking: (i) a Settlement Order approving the Settlement, directing the GUC Trust to pay a Settlement Amount, and waiving Plaintiffs' claims to current GUC Trust Assets and past distributions of GUC Trust Assets (the "**Waiver Provision**"); and (ii) a Claims Estimate Order. The parties agreed early in negotiations that the payment of the Settlement Amount and the Waiver Provision would not be dependent on the outcome of the Claims Estimate Order. This would enable a two-step process whereby the Settlement Order could be entered first and a Claims Estimate Order could be entered later following further proceedings.⁸³

59. The parties also agreed that the Signatory Plaintiffs would subsequently determine procedures for the administration and allocation of the Settlement Fund, subject to notice and an opportunity for all Plaintiffs to be heard. This would enable issues related to eligibility and

⁸⁰ Weisfelner Testimony, ¶ 31; Steel Testimony, ¶ 9.

⁸¹ Weisfelner Testimony, ¶ 32; PX-001 § 2.4 at BR005727-28.

⁸² Weisfelner Testimony, ¶ 33.

⁸³ Weisfelner Testimony, ¶ 34; PX-001 §§ 2.2, 2.3, 2.4 at BR005726-5728.

allocation to be deferred until after the Accordion Feature was triggered and there was a significant *res* available to be allocated.⁸⁴

60. In connection with this staged settlement process, early in the negotiation process, the Participating Unitholders and the GUC Trust raised concerns about how to bind absentee claimants to the Settlement Order, in particular the Waiver Provision, and whether class certification for settlement purposes was necessary. On May 9, 2017, Daniel Golden of Akin Gump asked Designated Counsel about how to include all plaintiff groups in the proposed settlement with the GUC Trust.⁸⁵

61. Designated Counsel and Co-Lead Counsel considered pursuing certification for a settlement class, but determined that class certification issues should not be dealt with until after the Accordion Feature had been triggered. At that time, when there was a significant *res* to be distributed, the Signatory Plaintiffs could work with a magistrate judge to determine the details of the criteria for eligibility and allocation of the Settlement Fund.⁸⁶

62. Throughout the negotiations, Designated Counsel consistently took the position that class certification was not necessary and that reliance on Bankruptcy Rule 9019 would suffice, and made this position known to the GUC Trust and Participating Unitholders. The GUC Trust continued to negotiate the settlement despite knowing and ultimately conceding that proceeding under Rule 9019 would suffice and that certification of a settlement class was not necessary or contemplated. The GUC Trust did not demand that class certification be added to the Settlement Agreement,⁸⁷ and none of the twenty-one versions of the Settlement Agreement

⁸⁴ Weisfelner Testimony, ¶ 35.

⁸⁵ Weisfelner Testimony, ¶ 36; PX-002 at BR001936; Steel Testimony, ¶ 10.

⁸⁶ Weisfelner Testimony, ¶ 37.

⁸⁷ M. Williams Dep. (Vol. I) at 67:13-18.

circulated among the parties over the course of more than two months provide for class certification.⁸⁸

63. Instead, the parties focused on how to provide extensive notice of the Settlement Motion to Plaintiffs in order to bind them to the Settlement Order and the cost of such notice. The GUC Trust agreed to pay for notice to Plaintiffs and other parties impacted by the Settlement Agreement, but negotiated for a cap on notice costs, with the Signatory Plaintiffs to pay for notice costs, if any, above the cap.⁸⁹

64. To determine the cost of notice and create a fulsome notice program, Co-Lead Counsel obtained bids for a notice program and engaged a notice provider, Cameron R. Azari, Esq., the Director of Legal Notice for Hilsoft Notifications, a business unit of Epiq Systems Class Action and Claims Solutions. Based on the bids received, the estimated cost of the contemplated notice ranged from \$4 to \$6 million. On August 9, 2017, Howard Steel of Brown Rudnick provided Naomi Moss of Akin Gump and Keith Martorana of Gibson Dunn with notice proposals to support its offer to set the notice cost cap at \$6 million. After several back and forth exchanges, Gibson Dunn ultimately agreed to this amount in August. The brackets were removed in the August 11, 2017 draft of the Settlement Agreement accepted by Gibson Dunn.⁹⁰

65. The parties decided to seek court approval of the proposed notice procedures in advance of incurring the cost of notice. Accordingly, on July 25, 2017, Howard Steel of Brown Rudnick circulated initial drafts of a motion seeking approval of the notice procedures and forms

⁸⁸ Weisfelner Testimony, ¶ 38; Steel Testimony, ¶ 11.

⁸⁹ Weisfelner Testimony, ¶ 39; PX-006 at BR004613; PX-001 at BR005729; Steel Testimony, ¶ 12.

⁹⁰ Weisfelner Testimony, ¶ 40; PX-045 at BR006635; PX-001 at BR005729.

of notice for Plaintiffs and, on August 7, 2017, a declaration in support of the motion by the notice provider.⁹¹

66. The evidence will show that at no point during negotiations or the finalization of the Settlement documentation did the GUC Trust or its counsel indicate to the Signatory Plaintiffs that the GUC Trust or its counsel would not sign the Settlement Agreement or any of its ancillary documents prior to previewing the proposed notice procedures or any of the Settlement terms with the Bankruptcy Court.⁹²

D. Finalizing The Settlement Agreement And Informing New GM.

67. In early August 2017, the parties were working to schedule a conference with the Bankruptcy Court to present the Settlement and preliminarily discuss notice issues.

68. On August 3, in response to Brown Rudnick's inquiry regarding Judge Glenn's availability, Naomi Moss of Akin Gump informed Howard Steel and Keith Martorana of Gibson Dunn that the Judge is "out next week. He is in the week after," *i.e.*, the week of August 14th.⁹³

69. Accordingly, on August 3, when Howard Steel circulated a draft letter providing the Bankruptcy Court with a status update regarding settlement discussions to Akin Gump and Gibson Dunn, he asked whether it should include that the parties "hope to be before the court week of 14th." Keith Martorana of Gibson Dunn advised that the anticipated conference should not be made public "prior to speaking to New GM. They will understandably go crazy." The letter was filed without any reference to the anticipated conference.⁹⁴

⁹¹ Weisfelner Testimony, ¶ 41; PX-029 at BR003073; PX-044 at BR006376.

⁹² Weisfelner Testimony, ¶ 42.

⁹³ Steel Testimony, ¶ 28; PX-037 at BR006091; Weisfelner Testimony, ¶ 44.

⁹⁴ Steel Testimony, ¶ 29; *Letter re: Status of Settlement Discussions Between the Ignition Switch Plaintiffs, Certain Non-Ignition Switch Plaintiffs, Certain Pre-Closing Accident Plaintiffs, and the GUC Trust*, dated Aug. 4, 2017 [ECF No. 14027].

70. Also on August 3, Keith Martorana of Gibson Dunn circulated the Settlement documentation and described its edits as “minor clean-ups” or “slight changes,” with the exception of Settlement Motion. In addition, Mr. Martorana deleted the phrases “DRAFT,” “SUBJECT TO FRE 408,” and “GDC/AG COMMENTS 8/2” from the top of the Settlement Agreement and replaced them with the phrase “EXECUTION VERSION.”⁹⁵

71. On August 7, Howard Steel sent combined Brown Rudnick and Goodwin Procter comments to all Settlement documents and asked “Please let us know where we are final, and any comments / anything you would like to discuss.” The edits included a proposal to increase the notice cost cap amount in the Settlement Agreement from \$5 million to \$6 million. In addition, language was added to the Settlement Order and Claims Estimate Order clarifying that the Settlement was not intended to impact Plaintiffs’ claims against New GM and several edits to the Settlement Motion were made. Among the documents circulated was a draft of the joint declaration of Co-Lead Counsel in support of the Settlement Motion.⁹⁶

72. To substantiate the \$6 million notice cost cap amount proposal, on August 8, 2017, Howard Steel sent Gibson Dunn and Akin Gump a notice proposal from Epiq. Matt Williams of Gibson Dunn responded that “[a]nything over the ([\$]5/6 [million]) cap needs to be paid directly by the plaintiffs, not out of the 15mm” Settlement Amount.⁹⁷

73. Also on August 8, Keith Martorana informed the Signatory Plaintiffs that Gibson Dunn was in discussions with Lisa Norman (who had filed a motion seeking authority to file late proofs of claim on behalf of certain Pre-Closing Accident Plaintiffs on July 28, 2017), and that

⁹⁵ Steel Testimony, ¶ 30; PX-041 at BR006164; Weintraub Testimony, ¶ 7.

⁹⁶ Steel Testimony, ¶ 31; PX-044 at BR006376.

⁹⁷ Steel Testimony, ¶ 32; PX-045 at BR006635; PX-049 at BR006977.

Lisa Norman was amenable to becoming a signatory to the Settlement Agreement. Lisa Norman became a signatory without proposing any changes to the terms of the Settlement Agreement.⁹⁸

74. Keith Martorana of Gibson Dunn attached to this email the combined Gibson Dunn and Akin Gump comments to the Settlement documentation. The edits to the Settlement Agreement included adding brackets around the proposed \$6 million notice cost cap amount and adding that the failure to obtain the Notice Order approving the notice procedures contemplated in the Settlement Agreement would be an automatic termination event. Edits to the other documents largely concerned adding clarifying language that Plaintiffs would have no further rights to payment from the GUC Trust other than the Settlement Amount and Adjustment Shares once the waiver was effective.⁹⁹

75. Gibson Dunn requested no further changes to the Settlement Agreement after August 8, 2017.

76. Given that the Settlement Agreement was substantially finalized at this time, on August 9, 2017, Ed Weisfelner of Brown Rudnick and Danny Golden of Akin Gump called Arthur Steinberg of King & Spalding and Andrew Bloomer of Kirkland & Ellis, counsel to New GM. Danny Golden of Akin Gump summarized the conversation in an email to the parties, explaining that they gave New GM “a heads up on the proposed settlement and our desire to have a chambers conference with Judge Glenn for some day next week” and committed to providing New GM “a final set of pleadings sufficiently in advance of a to be scheduled chambers conference.”¹⁰⁰

⁹⁸ Steel Testimony, ¶ 33; PX-046 at BR006651.

⁹⁹ Steel Testimony, ¶ 34; PX-046 at BR006651.

¹⁰⁰ Steel Testimony, ¶ 35; PX-047 at BR007012; Weisfelner Testimony, ¶ 45; Direct Testimony of Daniel H. Golden (“Golden Testimony”), ¶ 15.

77. In his August 9 email, Danny Golden of Akin Gump further explained that “I would like to see if [we] can schedule an all hands call for tomorrow to finalize all of the settlement documentation and motions. . . . It seems to me we need a final call to finalize the documents so we can schedule that chambers conference. At this call please have the requisite people necessary to bind your respective clients.” (Emphasis added.) The call was eventually scheduled to take place on Friday, August 11, 2017 following a status conference in the MDL.¹⁰¹

78. Shortly thereafter, Akin Gump, acting on behalf and with the consent of Wilmington Trust and the Signatory Plaintiffs, reached out to chambers to schedule a conference. The purpose of the conference was to apprise the Court of the Settlement, to discuss the noticing procedures proposed in connection therewith, and to enlist the Court’s aid in obtaining the names and addresses of the parties that were subject to the New GM recalls or had pre-Sale accident and death claims, so that such parties could be provided with notice of the Settlement. That conference was ultimately scheduled for August 17, 2017.¹⁰²

79. In advance of the all hands call, on August 10, 2017, Howard Steel sent Naomi Moss of Akin Gump, cc’ing Bill Weintraub of Goodwin Procter, an email with light wordsmithing and clarifying edits to the Settlement Motion, Settlement Agreement, and Claims Estimate Order, explaining “with hopes for an easy Friday for all – here are BR / GP final

¹⁰¹ Steel Testimony, ¶ 36; PX-047 at BR007012; Weisfelner Testimony, ¶ 46; Weintraub Testimony, ¶ 8; Golden Testimony, ¶ 16. Emphasizing the goal of finality, Naomi Moss of Akin Gump reiterated this point on August 10 in an email to Howard Steel of Brown Rudnick and Bill Weintraub of Goodwin Procter, stating that “[t]he objective here is to have this be the final call on all outstanding issues. We would like everyone on the phone so we can close everything out.” PX-050 at BR007305. Danny Golden of Akin Gump further noted that “there will be no reservation of rights saying you need to check with your clients.” PX-050 at BR007305.

¹⁰² Golden Testimony, ¶ 17.

comments w/ commentary . . . We pledge to use great efforts that if these are taken, no more ink to be shed from plaintiffs' side on the docs."¹⁰³

80. On August 11, 2017, Co-Lead Counsel Steve Berman previewed certain terms of the Settlement in open court at the status conference before Judge Furman in the MDL.¹⁰⁴ Gibson Dunn attended the MDL status conference telephonically and subsequently did not object to the preview of the Settlement. At the conference, New GM made its objections to the Settlement clear and unmistakable, stating that "[t]his has got all the indicia of a collusive settlement."¹⁰⁵ Several news outlets carried stories regarding the Settlement following this conference.¹⁰⁶

81. Following the conference, on August 11, 2017, the parties had the all hands call to finalize the documents.¹⁰⁷ Mr. Berman's disclosure of the Settlement to Judge Furman was discussed, but Gibson Dunn did not raise any objections about such disclosure. Gibson Dunn conveyed that they were done with comments to the documents.¹⁰⁸ Indeed, after the status conference and associated news reports, no one on the Plaintiffs' side received a complaint from Gibson Dunn that a settlement had been announced at the status conference.¹⁰⁹ Nor did counsel for the GUC Trust tell any party that they did not have authority on the all hands call to bind the GUC Trust.¹¹⁰

¹⁰³ Steel Testimony, ¶ 37; PX-052 at BR007488.

¹⁰⁴ See Aug. 11 Hr'g Tr. at 37:13-39:1.

¹⁰⁵ Aug. 11 Hr'g Tr. at 41:16-17.

¹⁰⁶ Steel Testimony, ¶ 38; Weisfelner Testimony, ¶ 47.

¹⁰⁷ Golden Testimony, ¶ 18.

¹⁰⁸ Steel Testimony, ¶ 39; Weisfelner Testimony, ¶ 48.

¹⁰⁹ Steel Testimony, ¶ 40; Weintraub Testimony, ¶ 9.

¹¹⁰ Weintraub Testimony, ¶ 9.

82. That same afternoon of August 11th, Howard Steel circulated “[u]pdated docs per today’s all-hands. Hoping these are final and we can schedule signatures.” In addition to various clean-up and wordsmithing edits in the Settlement documentation, Mr. Steel removed the brackets around the \$6 million notice cost cap amount in the Settlement Agreement and clarified that the Settlement Agreement would not automatically terminate if the Bankruptcy Court entered a Notice Order that was reasonably acceptable to the Parties.¹¹¹

83. While minor changes were made to the ancillary settlement documents between August 11 and August 14, 2017, no further changes were made to the Settlement Agreement by any party after August 11, 2017.

84. On August 11th and August 12th, initial drafts of Bob Hilliard’s and Lisa Norman’s declarations in support of the Settlement Motion were circulated.¹¹²

85. On August 12, 2017, Keith Martorana of Gibson Dunn confirmed that “[f]rom the GUC Trust perspective, all of the documents sent over by Howie [Steel] (subject to one item we are discussing with Akin in the Settlement Agreement) are fine.” This email did not include any reservation that counsel’s comments were subject to client review or approval.¹¹³

86. In this same email, Keith Martorana of Gibson Dunn attached initial drafts of the notice and the Andrews Declaration. The Andrews Declaration stated, *inter alia*, that “the Settlement is a prudent and reasonable exercise of business judgment because it presents the best option for the GUC Trust to maximize recovery for the benefit of the GUC Trust Beneficiaries while minimizing the substantial risk posed by the Late Claims Motions” and “[t]he settlement is

¹¹¹ Steel Testimony, ¶ 41; PX-056 at BR005064; Weisfelner Testimony, ¶ 49.

¹¹² Steel Testimony, ¶ 42; PX-058 at BR005329; PX-062 at BR005373.

¹¹³ Steel Testimony, ¶ 43; PX-063 at BR005468; Weintraub Testimony, ¶ 11; Golden Testimony, ¶ 20.

in the best interests of the GUC Trust, the Old GM estates and the GUC Trust Beneficiaries.”¹¹⁴ Gibson Dunn and Ms. Andrews worked jointly to draft the Andrews Declaration, about which Ms. Andrews had “significant input.” And the GUC Trust gave Gibson Dunn authority to send the Andrews Declaration.¹¹⁵

87. On August 12, Howard Steel asked Keith Martorana, “what’s [the] open item” that he was discussing with Akin Gump. In response, he explained that Akin Gump – not the GUC Trust – had questions about which court (the Bankruptcy Court or the District Court) would hear allocation proceedings regarding the Settlement Fund and that he “suspected they will get over this issue, but since it was their comment i can’t sign-off for them.”¹¹⁶

88. On Monday, August 14, 2017 Akin Gump had confirmed with chambers, and relayed to Brown Rudnick, the Thursday, August 17, 2017 date for a conference.¹¹⁷

89. Also on August 14, Keith Martorana of Gibson Dunn confirmed resolution of the one open item they were discussing with Akin, stating that “I spoke to Akin, and we are ok with this.” The GUC Trust’s “last point” was to edit the declarations in support of the Settlement Motion to “read that ‘counsel to the Participating Unitholders’ participated in negotiations,” rather than stating that the Participating Unitholders participated in negotiations.¹¹⁸

90. Howard Steel responded that “We will update accordingly and send execution drafts as soon as possible.” He then circulated “proposed final execution versions of all of the documents. . . . Please let us know any comments or questions and confirm when you are signed

¹¹⁴ Steel Testimony, ¶ 44; PX-063 at BR005477 ¶ 28; Weintraub Testimony, ¶ 12; Golden Testimony, ¶ 20.

¹¹⁵ M. Williams Dep. (Vol. I) at 79:21-24.

¹¹⁶ Steel Testimony, ¶ 45; PX-073 at BR005760.

¹¹⁷ Steel Testimony, ¶ 46; PX-067 at BR005770.

¹¹⁸ Steel Testimony, ¶ 47; PX-073 at BR005760; Weisfelner Testimony, ¶ 50; Golden Testimony, ¶¶ 21-22.

off.” These versions had all “draft” and “privileged and confidential” headings removed. The remaining changes were: (i) light edits by Brown Rudnick and Goodwin Procter to the Andrews Declaration and notice that had been circulated over the weekend; (ii) updating citations to the supporting declarations in the Settlement Motion; and (iii) Gibson Dunn’s requested edit to clarify in the supporting declarations that counsel to the Participating Unitholders participated in negotiations.¹¹⁹

91. In response, Keith Martorana of Gibson Dunn requested one change to the notice regarding the percentage of GUC Trust Units held by the Participating Unitholders and stated that “[a]t this point we do not have any further comments, but are obtaining final sign-off from our client.”¹²⁰ Matt Williams, counsel to the GUC Trust, testified that, at this point, “all the terms in the document [the Settlement Agreement] we agreed to.”¹²¹ He further testified that “[a]t the time the agreement was shared with New GM, we had agreed to the final form of those documents”¹²² and clarified that the GUC Trust had agreed to “the terms and the documents.”¹²³

92. Next, Daniel Golden of Akin Gump asked, “Can someone please advise me who will be in a position to send the final documentation to Arthur [Steinberg] by cob today.” Howard Steel responded that “[w]e can send to him when everyone signed off – please advise if you have not already.”¹²⁴

93. Confirmation that each party was “signed off” came from: (i) Co-Lead Counsel and Designated Counsel on behalf of the Economic Loss Plaintiffs; (ii) Hilliard Martinez

¹¹⁹ Steel Testimony, ¶ 48; PX-073 at BR005760; PX-075 at BR005804.

¹²⁰ Steel Testimony, ¶ 49; PX-078 at BR006024.

¹²¹ M. Williams Dep. (Vol. I) at 94:1-2.

¹²² M. Williams Dep. (Vol. I) at 104:22-24.

¹²³ M. Williams Dep. (Vol. I) at 104:25—105:1-2.

¹²⁴ Steel Testimony, ¶ 50; PX-078 at BR006024; Weisfelner Testimony, ¶ 52.

Gonzalez, the Law Offices of Thomas J. Henry, and Goodwin Procter on behalf of the Initial Pre-Closing Accident Plaintiffs; (iii) Andrews Myers on behalf of the Additional Pre-Closing Accident Plaintiffs; (iv) Akin Gump on behalf of the Participating Unitholders; and (v) Gibson Dunn on behalf of the GUC Trust.¹²⁵ At 7:26 p.m., Keith Martorana of Gibson Dunn wrote that “[w]e are waiting for final approval from client, but unlikely to come tonight. You are, however, authorized to send current versions to New GM this evening.”¹²⁶ However, Beth Andrews had already communicated her “sign[] off” on behalf of Wilmington Trust Company to Keith Martorana nine minutes earlier at 7:16 p.m.¹²⁷ When Howard Steel responded “want me to send now or wait? Want any language added to the note to Arthur,” Martorana wrote that “[y]ou can send now. Nothing to add in the note.”¹²⁸

94. After receiving this response from Keith Martorana, Howard Steel emailed the group and confirmed that he “heard from everyone and going to send over to Arthur now, thanks.” In response, Danny Golden of Akin Gump asked that Mr. Steel “[s]end it but say it’s confidential until it is filed; we are sending as a courtesy.”¹²⁹

95. Accordingly, on August 14th, at 9:14 p.m., Howard Steel sent the final versions of the settlement documents to New GM’s counsel, cc’ing counsel for the GUC Trust.¹³⁰

¹²⁵ Steel Testimony, ¶ 51; PX-077 at BR006006; PX-081 at BR005593; PX-085 at BR005790; PX-089 at BR005545.

¹²⁶ Steel Testimony, ¶ 52; PX-089 at BR005545; Weisfelner Testimony, ¶ 53; Golden Testimony, ¶ 29.

¹²⁷ PX-088.

¹²⁸ Steel Testimony, ¶ 52; PX-089 at BR005545.

¹²⁹ Steel Testimony, ¶ 53; PX-091 at BR005550; PX-090 at BR005601.

¹³⁰ Steel Testimony, ¶ 54; PX-094 at BR005613.

96. By this point, emails disclosed in discovery among the GUC Trust representatives and their counsel at Gibson Dunn demonstrate that the GUC Trust had signed off on the Settlement.

a. On August 10, 2017, Wilmington Trust Vice President David Vanaskey emailed Wilmington Trust Vice President Beth Andrews an invite to a Corporate Trust Distressed Investing Roundtable invite. Topic 1 was: “Bankruptcy Rule 9019 settlements: What the indenture trustee needs to know.” Vanaskey wrote: “In light of the Ig Switch settlement may be something worth considering attending. Also Debbie Newman [of Akin Gump] presenting.”¹³¹

b. On August 11, 2017, Gabriel Gillett at Gibson Dunn sent to David Vanaskey a link to an August 11 Bloomberg article titled “GM Accuses Bankruptcy Trust of Secret \$1 Billion Stock Plot.” The linked article reported on Steve Berman’s August 11 disclosure of the settlement to Judge Furman. Mr. Gillett did not state any objections that a settlement had not been reached and simply said to Mr. Vanaskey: “This is going to be fun.”¹³² The next day, David Vanaskey forwarded to the email to his family members, stating: “See link on GM deal....”¹³³

c. On the morning of August 14, 2017, Mr. Vanaskey received an email regarding an August 11th Reuters article entitled, “GM Blasts \$1 Billion Deal Between Ignition Switch Plaintiffs, Creditor Trust.” The first line of the article read, “plaintiffs suing General Motors Co. over faulty ignition switches and other alleged vehicle defects have reached a \$1 billion settlement requiring the automaker to turn over that amount of stock. . .”¹³⁴ Mr. Vanaskey did

¹³¹ PX-051.

¹³² PX-059.

¹³³ PX-060.

¹³⁴ PX-069.

not contest the public representation that the parties “[had] reached a \$1 billion settlement,” nor did he seek a retraction of the article’s statements.

d. On August 14, 2017, Beth Andrews sent the Bloomberg article to other Wilmington Trust employees and left no doubt that a deal had been consummated:

I just wanted to alert you to an article that appeared on Bloomberg last Friday concerning the settlement the GUC Trust is about to sign with the Ignition Switch plaintiffs. We knew that New GM was not pleased that we were contemplating settling with the plaintiffs and supporting their claims estimation order. The approval of the claim estimation would trigger the accordion feature under the Plan of Reorganization and would cause New GM to have to issue up to 30mm in new shares. New GM will fight our settlement and the estimation order. We expect the Trust will be sued by New GM. Entering into the settlement is not an action we have taken without a great deal of thought and guidance from our legal advisors. We believe settling with the plaintiffs is in the best interest of the Trust and will enable us to wind it down and make a final distribution to all of the unitholders sooner rather than later. (Emphasis added.)¹³⁵

e. On August 14, 2017, Keith Martorana forwarded to Beth Andrews and David Vanaskey Howard Steel’s email asking “How’s the trust looking on sign off?”¹³⁶ Keith wrote: “David/Beth: FTI has signed off. Is the GUC Trust prepared to sign off? If at all possible it would be better to send these docs to KS [King & Spaulding] tonight[.]” Ms. Andrews’ response: “Yes, I took a look at these before I left the office. Signed off.” (Emphasis added.)¹³⁷

f. On the morning of August 15, 2017, David Vanaskey sent an email to Lon LeClair at Wilmington Trust attaching Reorg Research report titled “GM GUC Trust Files Latest Quarterly Trust Report Amid Reports of Settlement With Plaintiffs that Could Trigger Accordion” and an August 12 Wall Street Journal article titled “Lawyers Seek \$1 Billion from

¹³⁵ PX-066.

¹³⁶ PX-087.

¹³⁷ PX-088.

GM.” Mr. Vanaskey informed Mr. LeClair: “A couple of follow ups on the GUC Trust. Note we filed our 10Q yesterday before the market opened. Also we expect to share the settlement with New GM today. Lastly, there is a chambers conference with Judge Glenn Thursday. Certainly will keep you updated.”¹³⁸

97. Ms. Andrews claimed in her deposition that her communication to Gibson Dunn indicated “sign off” on the “form of the documents” only and that it did not authorize Gibson Dunn to sign the Settlement Agreement.¹³⁹ Ms. Andrews further testified, “When I have any of our partners sign on behalf of the trust, I give them explicit authority to take certain actions. So I would have expected that Keith would have come back to me and said everyone has signed off on this, there are no further changes, and I would have responded please use this e-mail as our authority to sign the document on behalf of the GUC Trust.”¹⁴⁰ She also testified, “when I have any of our partners take any action on behalf of the trust, especially when I file my financial reports, the last thing I do is, before the filing is done, I send an e-mail saying -- instructing someone to go ahead, they have the authority to make the filing.”¹⁴¹

98. In response to this testimony, counsel for Plaintiffs requested that counsel for GUC Trust/The Wilmington Trust Company produce: “Beth Andrews’ emails authorizing Gibson Dunn to execute (1) the August 16, 2017 letter to Judge Glenn signed by Matt Williams and Arthur Steinberg (Mr. Williams’ authority to Mr. Steinberg to e-sign for him is attached);

¹³⁸ PX-099. Mr. Vanaskey also forwarded the same article to some of his family members with the explanation “More fun and games.” PX-098

¹³⁹ B. Andrews Dep. at 119:19-24; 121:8-11; 156:11-15.

¹⁴⁰ Id. at 112:12-23.

¹⁴¹ Id. at 152:16-24.

and (2) the written agreement between New GM and GUC Trust or Wilmington Trust Company that preceded the September 12, 2017 Forbearance Agreement.”¹⁴²

99. In response, Gibson Dunn produced four email strings, each showing that Ms. Andrews does not (1) give “form of documents” approvals separately from authorization to file or sign; or (2) have a practice of expressly stating that signature is authorized. Rather, the emails and resulting documents show that Ms. Andrews uses the words “signed off” to approve and direct the execution and filing of documents. The emails produced by Gibson Dunn are summarized as follows:

- a. In a June 16, 2017 email string regarding “draft status letter [to Judge Glenn] and settlement markup,” Gabriel Gillett of Gibson Dunn wrote to Beth Andrews and others, “I have attached Plaintiffs’ draft of a status letter to the court, due on Friday...”¹⁴³ Matt Williams responded, “We (gdc) think the letter looks fine, as do the unit holders.”¹⁴⁴ Beth Andrews responded, “Yes, letter is fine.” The status letter was filed the following day with various Gibson Dunn attorney names appearing under the signature block.¹⁴⁵
- b. In an August 16, 2017 email string, which attached a draft letter to Judge Glenn announcing the settlement between GUC Trust and New GM, Matt Williams wrote to Beth Andrews and others, “Please confirm signoff on the above. I expect to have New GM signoff shortly.” Mr. Williams followed-up, “Can Wilmington

¹⁴² PX-142.

¹⁴³ PX-104.

¹⁴⁴ Id.

¹⁴⁵ Id.

sign off so we can file the letter?” Beth Andrews responded, “Signed Off.”¹⁴⁶

The status letter was filed that same day with the following signature affixed: “/s/
Matthew J. Williams”.¹⁴⁷

c. In an August 16, 2017 email, Keith Martorana wrote, “All – attached is a draft of the 8-K announcing the settlement with New GM. Currently, we plan to file the joint letter this evening, which would meat [sic] we need to file the attached tomorrow morning. Accordingly, please review as soon as possible and provide comments (or sign-off) as soon as possible.” Beth Andrews responded, “We are signed off.”¹⁴⁸

d. The following day, Keith Martorana circulated the resulting proof of the 8-K, writing in an email to Beth Andrews and others, “Attached is the Edgar proof...As mentioned previously, we will need to file this document this morning. Please review and provide sign-off as soon as possible. Beth Andrews responded, “We are signed off as well.”¹⁴⁹ The 8-K was subsequently filed with the following signature affixed, “/s/ Beth A. Andrews”.¹⁵⁰

100. Counsel for GUC Trust/Wilmington Trust Company has not produced a single document wherein Ms. Andrews provided approval on the form of a document separate from her authorization to sign or file the document.

¹⁴⁶ PX-125.

¹⁴⁷ See Update on Matters Related to the Late Claim Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m., dated August 16, 2017 [ECF No. 14060].

¹⁴⁸ PX-123.

¹⁴⁹ PX-129.

¹⁵⁰ PX-143.

101. Counsel for GUC Trust/Wilmington Trust Company has not produced a single document wherein Ms. Andrews states, “please use this e-mail as our authority to sign the document on behalf of the GUC Trust” or “instructing someone to go ahead, they have the authority to make the filing” or similar statements or instructions.

102. The GUC Trust will not be able to prove that during the negotiation of the settlement documents the GUC Trust or its counsel made explicit to any Plaintiffs’ representative that the GUC Trust’s approval of the Settlement would not be final until the Settlement Agreement was signed or that signatures would not be affixed to the settlement documents until after the scheduled conference with the Bankruptcy Court.

E. The GUC Trust Abandons The Settlement.

103. Beginning on August 14, Gibson Dunn arranged a secret meeting with counsel for New GM (“Gibson Dunn-GM Meeting”), to the exclusion of the GUC Trust, Participating Unitholders and Plaintiffs. Gibson Dunn suggested that the Participating Unitholders be excluded if New GM preferred, which it did.¹⁵¹

104. The Gibson Dunn-GM Meeting occurred on August 15, 2017. According to the counsel for the GUC Trust, this meeting lasted two hours “at most,” consisting in large part of New GM reciting “execution risks” that the GUC Trust “already knew,” including the potential to bind absentee claimants absent class certification.¹⁵²

105. At the Gibson Dunn-GM Meeting, counsel for New GM offered to pay Wilmington Trust Company’s legal fees for defending against Plaintiffs’ claims in exchange for its agreement not to proceed with its settlement with Plaintiffs.

¹⁵¹ See PX-096; Golden Testimony, ¶ 28.

¹⁵² See Aug. 17, 2017 Hr’g Tr. 16:14-21:14.

106. On August 15, in a series of emails and a brief call late that afternoon, Mr. Williams told Mr. Golden that nothing much had happened at the meeting with New GM earlier that day. Mr. Golden explains: “The lawyers from Gibson Dunn did not tell me or anyone else at Akin Gump that New GM had proposed that the GUC Trust enter into an alternative settlement with New GM, or that Gibson Dunn was considering doing so.”¹⁵³

107. On August 15, New GM filed a letter with the Bankruptcy Court requesting that the August 17 conference be cancelled, stating, among other things, that “the proposed settlement is legally improper, collusive and in bad faith.”¹⁵⁴

108. Later that day, August 15, 2017, Naomi Moss of Akin Gump circulated to Brown Rudnick a draft letter in response to New GM’s letter for the GUC Trust to file stating that:

The purpose of scheduling the Conference was to apprise the Court of the existence of the Proposed Settlement, which, if ultimately approved, would resolve the outstanding disputes between the GUC Trust and Unitholders, on the one hand, and the Economic Loss Plaintiffs and Pre-Closing Accident Plaintiffs, on the other, and to discuss with the Court the contours of the proposed noticing procedures for the motion seeking approval of the Proposed Settlement.¹⁵⁵

The draft letter further explains that the GUC Trust did not object to having the conference in open court and had no intention of seeking substantive relief at the conference.¹⁵⁶ The Settlement is described as “proposed” because, until the Settlement Agreement is approved by the Court under Bankruptcy Rule 9019, it must be a “proposed” agreement.¹⁵⁷

¹⁵³ Golden Testimony, ¶ 31.

¹⁵⁴ See *New GM’s Position on Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m. Regarding Proposed Settlement of Late Claim Motions*, dated Aug. 15, 2017 [ECF No. 14053].

¹⁵⁵ Steel Testimony, ¶ 61; PX-105 at BR006034.

¹⁵⁶ See id.

¹⁵⁷ Id.

109. On August 16, 2017, after the secret Gibson Dunn-GM Meeting, Gibson Dunn sent a draft letter at 3:37 a.m. in response to New GM's request to cancel the conference, stating that:

The GUC Trust has no objection to the Conference proceeding on the record in open Court, rather than Chambers. The purpose of scheduling the Conference was to update the Court on the status of a potential settlement between the GUC Trust, the Economic Loss Plaintiffs and the Pre-Closing Accident Plaintiffs (the "Proposed Settlement"), which Proposed Settlement is nearly final, but has not yet been executed by the parties and is non-binding. There was never any intention of having a substantive discussion of the merits of the Proposed Settlement at the Conference, or seeking any substantive relief.¹⁵⁸

Despite its voluminous correspondence with Plaintiffs, this is the first time Gibson Dunn or Wilmington Trust Company referred to the settlement with Plaintiffs as "non-binding."

110. After reviewing the draft and seeing that it captured the key points (that the conference should go forward in open court and no substantive relief was being sought), without focusing on the language regarding the Proposed Settlement being purportedly non-binding, Howard Steel of Brown Rudnick responded at 8:16 a.m. on August 16, 2017 that "will send you our draft shortly – says a lot of the same," meaning no objection to proceeding in open court and no substantive relief was being sought.¹⁵⁹

111. Before the parties had a chance to file responsive letters, on August 16, the Bankruptcy Court entered an order keeping the August 17th date for the conference, to be held in open court on the record.¹⁶⁰

112. At 9:40 a.m. on August 16, 2017, Mr. Martorana of Gibson Dunn requested a call with Akin Gump that occurred at 11:30 a.m. that day. On that call, Mr. Williams first asked Mr. Golden if he was sitting down, and then told him that Wilmington Trust did not intend to move

¹⁵⁸ Steel Testimony, ¶ 62; PX-106 at BR006081 (emphasis added).

¹⁵⁹ Steel Testimony, ¶ 63; PX-111 at BR006071.

¹⁶⁰ See Order re August 17, 2017 Court Conference, dated Aug. 16, 2017 [ECF No. 14056].

forward with the Plaintiff Settlement, and had agreed instead to enter into an agreement with New GM.¹⁶¹

113. That same day, Gabi Gillett of Gibson Dunn raised the issue of class certification, asking whether Plaintiffs had “thought more about” “the interplay between settlement and seeking class certification,” which, without knowledge of the Gibson Dunn meeting with New GM, Brown Rudnick believed related to preparing to respond to New GM’s objection to our Settlement Agreement based on class certification issues.¹⁶²

114. In the late afternoon on August 16, 2017, Beth Andrews sent a lengthy email to Lon LeClair and others at Wilmington Trust informing them of: (i) the “proposed settlement” with the plaintiffs and its major terms; (ii) the meeting held between New GM and Gibson Dunn and the objections to the “proposed settlement” that New GM raised at that meeting; and (iii) New GM’s offer and its terms. A redacted portion suggests that Gibson Dunn recommended accepting the GM offer. The email notes that the unitholders “are not pleased with these recent developments and have sent the Trust a strongly worded letter.”¹⁶³

115. On the afternoon of August 16, 2017, the day before the August 17th status conference before the Bankruptcy Court, Designated Counsel received a call from Gibson Dunn informing that the GUC Trust was pulling out of the Settlement Agreement.¹⁶⁴

116. Also on August 16, 2017, New GM and the GUC Trust submitted a joint letter to the Bankruptcy Court explaining that the GUC Trust was backing out of the Settlement and

¹⁶¹ Golden Testimony, ¶ 32.

¹⁶² Steel Testimony, ¶ 59; PX-100 at BR006032.

¹⁶³ PX-109.

¹⁶⁴ Weisfelner Testimony, ¶ 56.

decided to enter into “a proposed settlement agreement with New GM that will be subject to this Court’s approval.”¹⁶⁵ The letter described the terms of the proposed agreement with New GM.

117. Gibson Dunn provided a draft of the letter to Wilmington Trust and FTI Consulting prior to submission. In response, Beth Andrews of Wilmington Trust responded, “Signed off.” No further client approval was required.¹⁶⁶

118. In response, that same day, Brown Rudnick filed the final Settlement documentation with the Bankruptcy Court.¹⁶⁷ The next day (August 17, 2017), Brown Rudnick filed a supplemental letter attaching relevant communications with the GUC Trust demonstrating the binding nature of the Settlement Agreement.¹⁶⁸

119. In the evening of August 16, 2017, Robby Tennenbaum at Golden Tree Asset Management emailed David Vanaskey and objected to Wilmington Trust’s abandonment of the settlement. “We are a member of the ad hoc group of unitholders in the GUC Trust. Akin Gump has informed us that the GUC Trust will not be proceeding with the proposed settlement with the ignition switch plaintiffs and is instead considering entering into an alternative settlement with New GM in advance of tomorrow’s hearing. We believe that abandoning a transaction that is supported by a group representing a majority of the outstanding units in favor of a deal that is likely to face a strident objection from unitholders would be both ill-advised and potentially contravene the GUC Trust Administrator’s fiduciary duties, and reserve all rights in this regard.

¹⁶⁵ *See Update on Matters Related to the Late Claim Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m.*, dated August 16, 2017 [ECF No. 14060]; Weisfelner Testimony, ¶ 57.

¹⁶⁶ PX-126.

¹⁶⁷ *See Letter to Judge Glenn in Response to GM’s Letter Update on Matters Related to the Late Claim Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m.*, dated August 16, 2017 [ECF No. 14061].

¹⁶⁸ *See Letter to Judge Glenn Supplementing Plaintiffs’ Letter*, dated Aug. 17, 2017 [ECF No. 14062].

We hope that you will reconsider this path and immediately engage in a constructive dialogue with our group before entering into an alternative proposal that may trigger litigation to the detriment of everyone involved.”¹⁶⁹

120. On August 17, 2017, Lon LeClair forwarded to David Vanaskey a link to WSJ Bankruptcy Alert titled “GM Reaches Deal With Old GM Trust on Ignition Switch Defense Costs.” LeClair expressed surprise: “Just saw this headline below. The headline doesn’t sound like it’s accurate. Do you know anyone who can get the underlying article.”¹⁷⁰ In a separate email from the same day, Vanaskey explained: “per your note on GM and the Wall Street there are some additional links below that are on point with the summary note that Beth has below. The deal discussed with you guys pre 10Q filing with the Ig Switch Plaintiffs is DOA. We are potentially entering into a deal with New GM based on advice of counsel. Unit holders are pissed. All bets may be off pending status conference with Judge Glenn this afternoon. [I]f things move forward we intend to meet with the unit holder next week to discuss before we sign anything.”¹⁷¹

121. Also on August 17, 2017, David Pickering of Pentwater Capital Management sent an email to David Vanaskey protesting Wilmington Trusts’ abandonment of the settlement with Plaintiffs: “We are one of the largest holders of MTLQU units. We have read the filings made in the bankruptcy court in the last 24 hours regarding the proposed settlement with New GM. Let me be explicit – you need to meet with Akin Gump before you sign anything with New GM. It is unfathomable to us how you as our fiduciary would ignore the wishes of 65% of the unit holders, refuse to at least meet with our representative to discuss where things stand and how the

¹⁶⁹ PX-124.

¹⁷⁰ PX-130.

¹⁷¹ PX-131.

situation could be resolved, and move forward anyway with signing an agreement with New GM.”¹⁷²

F. Representational Authority.

122. New GM has challenged the authority of Plaintiffs’ counsel to enter into the Settlement, yet counsel was fully authorized to negotiate and enter into the settlement.

123. Co-Lead Counsel Steve Berman, Elizabeth Cabraser, and Bob Hilliard have always been designated to represent the interests of defined groups of Plaintiffs in the Bankruptcy Court, along with Designated Counsel. For instance, Judge Furman’s Order No. 13 pertaining to the Organization of Plaintiffs’ Counsel, Protocols for Common Benefit Work and Expenses (Dkt. No. 47) declared that, “[w]ith respect to the common benefit claims and coordinated pretrial proceedings, Lead Counsel must: . . . (12) perform all tasks necessary to carry out the functions of Lead Counsel and to properly coordinate Plaintiffs’ pre-trial activities; . . . (16) negotiate settlements subject to Court approval on behalf of Plaintiffs; . . . [and] (17) if there is a settlement, propose a plan of allocation” Furthermore, Order No. 13 directed Plaintiff Liaison Counsel to “coordinate activities and information exchange between the MDL proceedings and the bankruptcy proceedings, including meeting and conferring with New GM to provide the Court joint written updates of the Bankruptcy proceedings as ordered by the Court about matters of significance, including hearings, schedules, and deadlines.”

124. The proposed class representatives’ client agreements with Co-Lead Counsel provided them with authority to take action as Co-Lead Counsel saw fit.¹⁷³ Co-Lead Counsel deemed they had authority to bind these clients subject to the clients having the right to object. Similarly, Mr. Hilliard’s client testified during her deposition that she was aware of the

¹⁷² PX-133.

¹⁷³ DX-A; DX-C.

Settlement prior to August 14, 2017 and gave her attorneys the authority to enter such an agreement upon hiring them.¹⁷⁴

125. Hagens Berman, Lief Cabraser Heimann & Bernstein LLP and Hilliard Munoz Gonzales LLP (now known as Hilliard Martinez Gonzales) retained Brown Rudnick LLP to act as its counsel in the proceedings in the Bankruptcy Court pursuant to a letter dated October 3, 2014. Subsequently, Brown Rudnick served as Designated Counsel for Economic Loss Plaintiffs in the Bankruptcy proceedings. Co-Lead Counsel retained Mr. Weintraub of Goodwin Procter LLP to serve as Designated Counsel for the Pre-Closing Accident Plaintiffs with respect to, *inter alia*, the Four Threshold Issues briefing triggered by the motion to enforce the Sale Order. Bob Hilliard and his co-counsel Thomas J. Henry also retained Mr. Weintraub to pursue the late claims of Hilliard's and Henry's individual clients.

126. The foregoing Plaintiffs' counsel has been actively litigating claims against the GUC Trust in the Bankruptcy Court for years without objection from New GM or the GUC Trust.

127. The Bankruptcy Court has recognized the proper role of Designated Counsel on multiple occasions, including in scheduling orders issued by the Bankruptcy Court. Here are three examples:

May 16, 2014 Scheduling Order (Bankr. ECF No. 12697) at 2 n.3: "Certain Plaintiffs designated the law firms Brown Rudnick LLP; Caplin & Drysdale Chartered; and Stutzman, Bromberg, Esserman & Plifka, PC (collectively 'Designated Counsel') to speak on their behalf at the Conference."

Sept. 14, 2014 Scheduling Order re Pre-Closing Accidents (Bankr. ECF No. 12897) at 1 n.2: "Certain plaintiffs in the Ignition Switch Actions designated the law firms Brown Rudnick, LLP; Caplin & Drysdale, Chartered; and Stutzman, Bromberg, Esserman & Plifka, PC (collectively,

¹⁷⁴ M. Mosley Dep. at 18:24-19:10.

‘Designated Counsel’) to speak on their behalf in connection with the Ignition Switch Motion to Enforce.”

Sept. 15, 2014 Scheduling Order re Monetary Relief Actions (Bankr. ECF No. 12898) at 1 n.2 (same).

128. New GM did not object when Co-Lead Counsel informed the Bankruptcy Court that they were acting pursuant to Judge Furman’s Order No. 13 to work with Designated Counsel in the Bankruptcy Court and were doing so in their capacity as MDL Co-Lead Counsel. Indeed, Co-Lead Counsel informed the Bankruptcy Court in a December 2014 filing in the Bankruptcy Court:

Dec. 16, 2014 Threshold Issue Brief (Bankr. ECF No. 13025) at 1, n.1: “Lead Counsel appointed in the General Motors LLC Ignition Switch Litigation Multidistrict Litigation ... have retained the undersigned Designated Counsel, pursuant to Lead Counsel’s authority under *Order No. 13 (Organization of Plaintiffs’ Counsel, Protocols for Common Benefit Work and Expenses)*, dated September 16, 2014 [MDL Proceeding ECF No. 304], to brief the Threshold Issues with respect to plaintiffs who have asserted actions consolidated for pre-trial purposes in the MDL Proceedings (‘Plaintiffs’).”

129. At a May 17, 2017 hearing, New GM’s bankruptcy lawyer acknowledged the role of Co-Lead Counsel and informed Judge Gerber that claimants would be bound by Co-Lead Counsel’s actions in the Bankruptcy Court once claimants received notice (exactly as contemplated under the Settlement Agreement):

MR. WEISFELNER: I think Judge Gerber in an effort to streamline the process and make it more efficient recognized designated counsel as the primary spokesperson for both ignition switch and non-ignition switch economic loss parties, provided that other people who thought we weren’t adequately addressing their concerns had the opportunity to independently address the court, but only after sort of assuring themselves that we were, to adopt the colloquial, screwing up. May 17, 2017 Hr’g Tr. at 68:19-69:1.

THE COURT: [I]s anyone other than the name plaintiffs represented by Berman and Cabraser, would they be bound by -- assuming -- and I know it’s disputed, but would they be bound by an affirmative decision by Mr. Weisfelner not to raise the clue -- the non-ignition switch plaintiff due process issues in the September scheduling order?

MR. STEINBERG: I think those plaintiffs plus those people who either got notice of or were aware of the schedul[ing] order, they all would be bound. May 17, 2017 Hr'g Tr. at 208:4-12.

130. Co-Lead Counsel filed pleadings in the Bankruptcy Court with the designation that they were doing so as MDL Co-Lead Counsel.¹⁷⁵ New GM never objected to such a designation and indeed regularly forwarded such pleadings to Judge Furman in its status reports.

131. In the Second Circuit, Co-Lead Counsel filed briefs with the same designation that New GM is just now challenging.¹⁷⁶ New GM never questioned that Co-Lead Counsel were acting as Co-Lead Counsel in the MDL while successfully pursuing an appeal from a Bankruptcy Court order.

132. New GM represented to the Bankruptcy Court, and the procedure has been, that plaintiffs in cases pending outside of the MDL are presumptively bound by positions taken by Co-Lead Counsel in the absence of separate pleadings.¹⁷⁷

133. Thus, through the many years of the bankruptcy New GM has known that: (i) Co-Lead Counsel deemed it their obligation to protect the interests of plaintiffs in the Bankruptcy Court; (ii) Co-Lead Counsel designated counsel in the Bankruptcy Court to protect those interests; and (iii) Co-Lead Counsel directly participated in the Bankruptcy Court proceedings in their capacity as Co-Lead Counsel in the MDL. During this entire process, New GM never questioned Co-Lead Counsels' authority—until now.

¹⁷⁵ See, e.g., *Opening Brief on Imputation Issue on Behalf of the Ignition Switch Plaintiffs, the Non-Ignition Switch Plaintiffs, the State of Arizona, the People of the State of California, the Post-Closing Ignition Switch Accident Plaintiffs and the Adams Plaintiffs*, dated Sept. 18, 2015 [ECF No. 13452].

¹⁷⁶ See *Letter re: Updated on Related Proceedings*, dated Oct. 2, 2017 [ECF No. 14127], Ex. 4 cover page, Ex. 4 p. 59.

¹⁷⁷ See May 17, 2017 Hr'g Tr. at 203:7-208:12 (Bankr. ECF No. 13943) (New GM arguing that all plaintiffs served with a scheduling order identifying certain issues to be briefed in the Bankruptcy Court were bound by the rulings on those issues).

134. Furthermore, under the terms of the Settlement Agreement, no releases are given nor any plaintiff's rights affected until and unless the Bankruptcy Court approves the Settlement Agreement under Bankruptcy Rule 9019, after notice and an opportunity to object is provided to all potentially affected claimants. And if the Court enters the Settlement Order, the subsequent administration of the settlement fund and determination of eligibility and criteria to obtain payment from the settlement fund (including potentially under Rule 23), and the amount of any potential payment from the fund to any individual plaintiff is subject to further notice and opportunity for plaintiffs to object.

V. The Settlement Agreement Is Binding On The GUC Trust.

135. The Signatory Plaintiffs and Participating Unitholders contend that the Settlement is binding on the GUC Trust as of August 14, 2017 because: (i) agreement was reached on all material terms; and (ii) the GUC Trust both failed to expressly reserve the right not to be bound in the absence of the signatures and conveyed its intent to be bound through, among other things: (a) reaching agreement on the form of the Settlement Agreement and all related documentation without any reservations; (b) drafting and signing off on motions and proposed orders required to be filed by the terms of the Settlement Agreement; (c) signing off on the documents without any reservations and permitting them to be sent to New GM; (d) seeking a conference with Judge Glenn to inform the Court about the existence of the Settlement and discuss the mechanics of the proposed notice procedures; (e) providing no objection or complaint to the preview of the Settlement before Judge Furman at the MDL status conference; and (f) Wilmington Trust communicated internally that there was a "settlement" and it was "in the best interest of the Trust."

136. Under New York law, “[s]tipulations of settlement are judicially favored, will not lightly be set aside, and are to be enforced with rigor and without a searching examination into their substance as long as they are clear, final and the product of mutual accord.” Forcelli v. Gelco Corp., 972 N.Y.S.2d 570, 573 (N.Y. App. Div. 2013).

137. To determine whether parties intend to be bound by an unsigned settlement agreement, courts examine whether: (i) there has been an express reservation of the right not to be bound in the absence of a writing; (ii) there was partial performance; (iii) all of the terms of the alleged contract have been agreed upon; and (iv) the agreement is the type of contract that is usually committed to writing. See Winston v. Mediafare Entm’t Corp., 777 F.2d 78, 80 (2d Cir. 1985). No single factor is decisive, each factor provides guidance to the Court. See Delyanis, 465 F. Supp. 2d at 175. In addition, the Court should consider a fifth factor, fundamental fairness. See Walker v. City of New York, 2006 WL 1662702, at *9-10 (E.D.N.Y. June 15, 2006); Conway v. Brooklyn Union Gas Co., 236 F. Supp. 2d 241, 252 (E.D.N.Y. 2002).

A. The Parties Reached Agreement On All Materials Terms.

138. An enforceable contract exists where objective manifestations of intent demonstrate that the parties had reached a definite and final agreement on all essential terms. See Stonehill Capital Mgmt. LLC v. Bank of the W., 28 N.Y.3d 439, 448-49 (N.Y. 2016). Here, the Signatory Plaintiffs and Participating Unitholders contend, and the evidence will show, that the Signatory Plaintiffs and the GUC Trust agreed to all material terms and conditions of the Settlement Agreement no later than August 14, 2017. Thus, this Winston factor weighs heavily in favor of finding that the Settlement Agreement is binding. See The Guardian Life Ins. Co. of Am. v. Calkins, No. 12 Civ. 8863 (JGK), 2014 WL 61475, at *2 (S.D.N.Y. Jan. 6, 2014) (holding that this factor weighed in favor of enforcement where the settlement terms had been

reduced to writing and “[a]ll that remained to be done was for the parties to sign the documents”).

139. Between June 6, 2017 (when the initial draft was sent to the GUC Trust) and August 14, 2017 (when the final draft was provided to New GM), the parties exchanged versions of the Settlement Agreement approximately twenty-one times. During this time, the evidence will show that agreement was reached on all material terms of the Settlement, which entail Plaintiffs’ release of rights and claims against the GUC Trust, Wilmington Trust, the Motors Liquidation Company Avoidance Action Trust, and Unitholders in exchange for the GUC Trust’s (i) payment of the \$15 million Settlement Amount; (ii) payment of notice costs up to \$6 million; and (iii) agreement to support entry of a Claims Estimate Order that would trigger New GM’s obligation to issue the maximum amount of Adjustment Shares. Conversely, there is no witness testimony, document or course of dealing evidence that supports the GUC Trust’s position there were “open” issues to the Settlement.

140. Agreement was also reached on all non-material terms of the Settlement Agreement, as well as on the form of the numerous ancillary documents, specifically:

- the Settlement Order attached to the Settlement Agreement;
- the Claims Estimate Order attached to the Settlement Agreement;
- the motion to approve the Settlement Agreement and Claims Estimate Order pursuant to Bankruptcy Rule 9019 required by Section 2.2 of the Settlement Agreement;
- four supporting declarations from the Wilmington Trust Company and counsel to the Parties;
- the motion to approve notice procedures required by Section 2.9(a) of the Settlement Agreement;
- forms of notice to Plaintiffs and Unitholders; and
- a declaration in support of the notice plan.

141. The GUC Trust contends that, although the Settlement Agreement contained all material terms and the GUC Trust signed off on the form of the documents, this Winston factor is not met due to the lack of written signatures or an execution date on the Settlement Agreement. For the reasons set forth herein, and as the Signatory Plaintiffs and Participating Unitholders will show at trial, this contention fails as a matter of fact and law. That the ministerial act of signing the Settlement Agreement after the GUC Trust expressly “signed off” on the Agreement did not occur has no bearing on whether agreement on the material terms has occurred and a binding contract was reached. See In re Lehman Bros. Holdings Inc., No. 17 Civ. 03424, 2017 WL 3278933, at *3-4 (S.D.N.Y. Aug. 2, 2017) (holding that all material terms—a sum of money in exchange for a release—had been agreed to, although open issues remained, such as the timing of payment); cf. R.G. Grp., Inc. v. Horn & Hardart Co., 751 F.2d 69, 76 (2d Cir. 1984) (describing this factor as evaluating “whether there was literally nothing left to negotiate or settle, so that all that remained to be done was to sign what had already been fully agreed to”).

142. New GM contends that the parties could not reach agreement on all material terms because Plaintiffs’ counsel allegedly did not have authority from their clients to enter into the Settlement Agreement. This issue was never raised in the course of negotiations. Moreover, as set forth herein, the facts and law support Plaintiffs’ counsel’s authority. Further, as Judge Furman and New GM have recognized, representational authority issues are premature in Phase 1. See Oct. 4, 2017 MDL Hr’g Tr. at 4:18-6:15; Letter re Briefing and Discovery Dispute, dated Sept. 25, 2017 [ECF No. 14114], at 2.

143. In any event, Plaintiffs’ counsel had the authority to settle on behalf of their clients, as did Gibson Dunn for the GUC Trust. New GM’s bare assertion to the contrary is

insufficient to overcome the presumption that counsel had authority to enter into the Settlement Agreement. See In re Artha Mgmt., Inc., 91 F. 3d at 329 (explaining that courts “presume that an attorney-of-record who enters into a settlement agreement, purportedly on behalf of a client, had the authority to do so,” and that “[i]n accordance with that presumption, any party challenging an attorney’s authority to settle the case under such circumstances bears the burden of proving by affirmative evidence that the attorney lacked authority”). Courts in this Circuit have consistently recognized that an attorney may bind his or her client to a settlement agreement so long as the attorney has apparent authority. See Conway, 236 F. Supp. 2d at 247. Moreover, “[o]nce a court has determined that an attorney had apparent or actual authority to settle a case, arguments insisting on a ‘final ratification’ by the parties are ‘unavailing.’” Febus v. Guardian First Funding Group, LLC, 90 F. Supp. 3d 240, 247 (S.D.N.Y. 2015) (quoting Reich v. Best Built Homes, Inc., 895 F. Supp. 47, 50 (W.D.N.Y. 1995)); see also id. at 246 (“Where an attorney has apparent authority to settle a case, and opposing counsel has no reason to doubt that authority, the settlement will be upheld regardless of later protestations by the party to the contrary.”) (internal quotations omitted). The evidence at trial will show that Gibson Dunn had both actual and apparent authority to enter the Settlement. Wilmington Trust gave Gibson Dunn actual authority to enter the Settlement when, among other things, Beth Andrews “signed off” on the Settlement and cloaked her attorneys with apparent authority to enter the Settlement when she approved the text and transmission of her Declaration, stating that the Settlement should be approved because it was in the best interests of the GUC Trust.

144. The GUC Trust and New GM also contend that a material issue remained open because the GUC Trust allegedly wanted to obtain the Court’s reaction to the Settlement at the August 17th conference before signing it. The evidence will show that this supposed intent was

never conveyed to the Signatory Plaintiffs and, thus, is irrelevant to the Winston analysis. See, e.g., Winston, 777 F.2d at 80 (“To discern that intent a court must look to the words and deeds [of the parties] which constitute objective signs in a given set of circumstances.”). Moreover, once a party agrees to the settlement terms, that party’s later change of heart will not frustrate the agreement’s enforceability. The actions of the GUC Trust and its counsel throughout these proceedings demonstrate their objective intent to settle this matter, despite their later protestations. See Walker, 2006 WL 1662702, at *6-7 (in order to determine parties’ intent to settle a case, the court must look, “not to their after-the-fact professed subjective intent, but their objective intent as manifested by their expressed words and deeds at the time”) (citing Hostcentric Techs., Inc. v. Republic Thunderbolt, LLC, 2005 WL 1377853, at *6 (S.D.N.Y. June 9, 2005)).

B. The GUC Trust Did Not Express An Explicit Reservation Of The Right Not To Be Bound Absent A Signature.

145. Under this Winston factor, a party must give “forthright, reasonable signals” that “remove[s] any doubt of the parties’ intent not to be bound absent a writing.” Stonehill Capital Mgmt. LLC, 28 N.Y.3d at 451. The evidence will show that that did not occur here.

146. The GUC Trust and New GM predominantly rely upon the introduction of Section 3.1 of the Settlement Agreement in the June 9 draft of the Settlement Agreement, which states that the Settlement Agreement “shall become effective and binding on the Parties on the date on which this Agreement is fully executed by each of the Parties,” to argue that the GUC Trust did not intend to be bound by the Settlement Agreement until it was signed.

147. The GUC Trust and New GM also identify other features of the Settlement Agreement that purportedly demonstrate that the GUC Trust did not intend to be bound by the Settlement Agreement until it was signed, such as that the Settlement Agreement: (a) was

labeled “execution version” and left placeholders for the effective date and signatures; (b) contained a clause keying performance obligations to execution of the agreement; and (c) contained “integration” and “amendment” clauses. These terms of the Settlement Agreement are insufficient as a matter of fact and law to demonstrate an express reservation of the right not to be bound after agreement on all material terms had been reached and the parties took steps reflective of their intent to proceed with the Settlement.

148. The evidence will show that the boilerplate language of Section 3.1 does not operate as a reservation of rights not to be bound until the Settlement Agreement was signed. The language of Section 3.1 was added to the Settlement Agreement by Akin Gump and Gibson Dunn in their first set of comments to the Settlement Agreement on June 9, 2017. The GUC Trust has presented no evidence that this language was ever discussed by the parties or that the GUC Trust ever highlighted, flagged, or announced to the Signatory Plaintiffs that they did not intend the Settlement Agreement to be binding until signatures were placed on the Settlement Agreement. By August 14, 2017, all parties knew and accepted the settlement terms and communicated that acceptance amongst themselves, to Judge Furman and to New GM. The settlement was reached no later than that date. Given the strong indication that all parties intended to be bound as of that date, the existence of boilerplate language in the Settlement Agreement does not undermine the evidence that the parties intended to be bound by the Settlement.

149. Indeed, the evidence will show that, as of August 14, 2017, signing the Settlement Agreement was only a formality. There was literally nothing left to negotiate or settle; no indication that issues were left unresolved; that essential terms were omitted (all of the terms were committed to written documents); and no indication that the GUC Trust objected to any of

the terms. All that remained was for the parties to sign what had already been fully agreed to. At this time, the GUC Trust did nothing to notify the Signatory Plaintiffs otherwise. The absence of an express reservation by the GUC Trust at that time not to be bound without inking a signature is evidence there was a binding Agreement.

150. The GUC Trust cannot now say they were waiting for this Court's commentary on the Settlement before signing. The GUC Trust will not be able to establish that they communicated that contention to the Signatory Plaintiffs at any time, nor is it plausible amongst sophisticated bankruptcy counsel. It is also inconsistent with the fact that the GUC Trust decided to abandon the Settlement before the August 17th court conference. Based on all of the foregoing, the Plaintiffs contend that the GUC Trust did not explicitly reserve the right not to be bound by the Settlement Agreement absent a signature.

151. The Signatory Plaintiffs and Participating Unitholders contend that the Court must balance this boilerplate language introduced in June against all of the GUC Trust's objectively manifested actions at the time of contract formation in July or August. As the evidence will demonstrate, without exception, the GUC Trust took affirmative steps in August to reveal its true intent that it would be bound by the Settlement Agreement. The Signatory Plaintiffs and Participating Unitholders will show at trial through testimony, emails, and documents that: (i) Gibson Dunn agreed to inform New GM about the Settlement; (ii) Gibson Dunn participated on the August 11 all hands call with "the requisite people necessary to bind your respective clients" where Gibson Dunn conveyed that they were done with comments to the documents; (iii) Wilmington Trust "signed off" on the Settlement; (iv) Gibson Dunn signed off to send the Settlement documentation to New GM; and (v) Gibson Dunn sought a status conference with the Court to preview the Settlement and notice plan.

152. In this context, the inclusion of Section 3.1 on June 9, 2017 failed to convey to the Signatory Plaintiffs that the GUC Trust would not be bound absent signatures on August 14, 2017 after the parties had reached agreement on all material and non-material terms of the Settlement Agreement and there was nothing left for future negotiation and settlement.

153. Moreover, courts have held that near-identical language to Section 3.1 “is insufficient to be treated as an explicit reservation that the parties should not be bound by the terms of their agreement until the written agreement is fully executed.” Kowalchuk v. Stroup, 61 A.D.3d 118, 124 (N.Y. App. Div. 2009) (holding that language in unexecuted agreement that agreement “is complete and binding upon its execution by all signatories” did not amount to a reservation of rights not to be bound); see also In re Lehman Bros. Holdings Inc., 2017 WL 3278933, at *3 (holding that language in unexecuted agreement that the agreement “shall become effective upon execution hereof by each of the Parties” did not amount to a reservation of rights not to be bound). Contrary to the GUC Trust’s contentions, these decisions were not based on the timing of insertion of the language. Rather, they focused on the fact that like here, no correspondence highlighted an express reservation not to be bound without a signature when the Settlement was reached, and the parties subsequent actions indicated an intent to be bound absent a signature, so that the boilerplate language was insufficient to be treated as an express reservation.

154. Similarly, New York courts have held that the inclusion in a written contract of the other provisions identified by the GUC Trust and New GM are not conclusive evidence of parties’ intent not to be bound in the absence of signatures. See, e.g., Delgrosso v. City of N.Y., No. 11-CV-4876 (MKB), 2013 WL 5202581, at *7-8 (E.D.N.Y. Sept. 13, 2013) (finding that agreement was binding where there was “no express reservation of the right not to be bound in

the absence of a writing signed by the plaintiff,” despite the inclusion of a merger clause and a provision stating that the plaintiff would “execute and deliver” the settlement documentation); Pearce v. Manhattan Ensemble Theater, Inc., No. 06 CV 1535 (KMW), 2009 WL 3152127, at *6 (S.D.N.Y. Sept. 30, 2009) (finding that the inclusion in a draft letter of agreement of a merger clause and signature lines did “not constitute express statements that the parties would only be bound by a written agreement”).

155. An express reservation not to be bound until signatures are affixed enables a party to “negotiate candidly, secure in the knowledge that he will not be bound until execution of what both parties consider to be [the] final document.” Winston, 777 F.2d at 80; see also R.G. Grp., Inc. v. Horn & Hardart Co., 751 F.2d at 75 (explaining that such provisions provide the “[f]reedom to avoid oral agreements” and pin down details in the process of drafting a written agreement “that are unnoticed or passed by in oral discussion”).

156. Here, as the GUC Trust acknowledges, the parties had reached agreement on all material terms and all of the final settlement documentation following over two months of painstaking negotiations. There is no evidence to suggest during the negotiations, the GUC Trust refused to enter the Settlement Agreement. Quite the opposite, throughout negotiations, the GUC Trust expressed its eagerness to settle, took necessary steps to achieve that end, and never implied its inability or unwillingness to settle absent a signature or preview with the Bankruptcy Court. Permitting the GUC Trust to now back out of the Settlement based on boilerplate language that was never a point of discussion among the parties does not serve this purpose of encouraging candid negotiations. Rather, adopting the GUC Trust’s contention presents a host of inequitable and impractical consequences, with serious commercial risks. It most certainly would erode the principles of finality and security of purpose when entering bankruptcy

settlements. Conversely, enforcing the Settlement promotes the efficient use of judicial resources and preserves the integrity of settlement as a meaningful way to resolve legal disputes.

157. New GM's contention that the parties' references to the Settlement Agreement as "proposed" is an admission that the Settlement Agreement was not binding is strained and illogical. The evidence will show that the Signatory Plaintiffs and Unitholders utilized the term "proposed" because the Settlement Agreement was a settlement that was ready to be proposed to the Bankruptcy Court for approval, a natural requirement under Bankruptcy Rule 9019, and a common understanding among the parties represented by sophisticated bankruptcy counsel.

158. New GM's further contention that Gibson Dunn's draft letter circulated on August 16 provides evidence of an intent not to be bound absent signatures fails. The letter—circulated the day after its meeting with New GM—stating that the "Proposed Settlement is nearly final, but has not yet been executed by the parties and is not binding" is at best an ex post facto rationalization for its decision to abandon the Settlement Agreement and at worst a self-serving trap as the Signatory Plaintiffs were in the dark about the Gibson Dunn-New GM meeting and agreement in principle.

C. There Was Partial Performance Of The Settlement Agreement.

159. The second factor under the Winston test is met when one party has partially performed its obligations under the settlement, and that performance has been accepted by the party disclaiming the existence of an agreement. See Alvarez v. City of N.Y., 146 F. Supp. 2d 327, 336 (S.D.N.Y. 2001). The Signatory Plaintiffs and Participating Unitholders contend that this Winston factor is met because, as the evidence will show, the parties: (i) prepared the Settlement Motion as required by Section 2.2 of the Settlement Agreement; (ii) prepared a motion seeking an order approving proposed notice procedures as required by Section 2.9(a) of

the Settlement Agreement; and (iii) started the process of securing Court approval by arranging to present the Settlement to this Court and discuss notice issues. See Powell v. Omnicom, 497 F.3d 124, 130 (2d Cir. 2007) (holding that there was partial performance of settlement where employer drafted a reference letter as it had agreed to under the settlement with the only remaining detail being whether the letter would describe the former employee's performance as "fully satisfactory" or "exemplary").

160. In addition, the Parties requested that the Court delay scheduling oral argument on the Initial Late Claims Motions Issues while negotiations were ongoing. See Searles v. Pompilio, No. 02 Civ. 6567, 2010 WL 11507379, at *5 (S.D.N.Y. Jan. 28, 2010) (finding that "partial performance of a settlement agreement exists where the parties 'relying on the apparent settlement, did not resume active litigation of the case'").

161. Further, the GUC Trust signed off on the final form of the Settlement Agreement and all related documentation, consented to providing those documents to New GM, and did not object to or comment on the announcement of the Settlement to Judge Furman at the MDL status conference. For these and other reasons that will be established at trial, there was partial performance of the Settlement. The factual evidence could not be clearer that the parties that negotiated the Settlement Agreement intended it to move forward, and they conducted themselves accordingly.

162. The GUC Trust and New GM contend that drafting settlement documents does not amount to partial performance. However, the motions that were drafted are required under the terms of the Settlement Agreement and do not document the Settlement itself. Further, the joint action to present the Settlement to the MDL Court, this Court and New GM and begin the

process of obtaining Court approval could not have been taken unless and until the parties had reached agreement upon all terms of the Settlement.

D. The Settlement Agreement Was Reduced To Writing And Enforcing The Settlement Agreement Does Not Run Afoul Of CPLR 2104.

163. The evidence will be undisputed that the Settlement was reduced to a detailed and carefully-negotiated final writing, and while the written Settlement Agreement was not signed, the terms of the Agreement had been reduced to writing, and hence this Winston factor weighs in favor of enforcing the Agreement. See In re Lehman Bros. Holdings Inc., 2017 WL 3278933, at *4 (enforcing written agreement that was unsigned due to party's own delay); Alvarez, 146 F. Supp. 2d at 337 (enforcing unsigned agreement where the terms "had been largely reduced to writing"); Delgrosso, 2013 WL 5202581, at *7 (enforcing unsigned agreement because, *inter alia*, "the settlement was in fact reduced to a writing, all of whose terms were approved and agreed upon entirely by [the parties] before there was any indication that the plaintiff had changed his mind"). The evidence will show that the GUC Trust admits that it was signed off on the final form of the Settlement Agreement and related documentation.

164. However, the GUC Trust and New GM argue that this factor is not met because the final writing was unsigned and, in their view, signatures are required by CPLR 2104.

165. CPLR 2104 provides that:

An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered. With respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulations shall be filed by the defendant with the county clerk.

CPLR 2104.

166. Contrary to the GUC Trust's and New GM's arguments, CPLR 2104 likely does not apply to the settlement of a federal action because "the CPLR only 'govern[s] the procedure in civil judicial proceedings in all courts of the state,'" not federal courts, and CPLR 2104 "is a rather narrow, limited exception to New York's general rules of contract" Mone v. Park East Sports Medicine and Rehab., P.C., No. 99 Civ. 4990, 2001 WL 1518263, at *4-5 (S.D.N.Y. Nov. 29, 2001); see also Alli v. Warden of A.R.N.D.C., 12 Civ. 3947, 2016 WL 7176979, at *2 (S.D.N.Y. Dec. 9, 2016), report and recommendation adopted, 2017 WL 118023 (S.D.N.Y. Jan. 10, 2017).

167. Moreover, CPLR 2104 "is a rule 'of convenience, designed to relieve the courts from having to resolve embarrassing factual disputes between counsel" Mone, 2001 WL 1518263, at *5. That purpose is not served where, as here, it is undisputed that the settlement was reduced to a final writing. See id.; see also Conway, 236 F. Supp. 2d at 251-52 (enforcing a settlement agreement where, although under CPLR 2104 "settlements of any claim are generally required to be in writing," "the written draft of the settlement had essentially been finalized . . . with the exception of the final dollar amount").

168. In any event, emails with a counsel's signature block can satisfy the requirements of CPLR 2104. See Scheinmann v. Dykstra, No. 16 CIV. 5446 (AJP), 2017 WL 1422972, at *5, n.6 (S.D.N.Y. Apr. 21, 2017). The evidence will show that emails from Keith Martorana of Gibson Dunn containing his signature block, including the August 12th communication by Mr. Martorana that "[f]rom the GUC Trust perspective, all of the documents sent over by Howie (subject to one item we are discussing with Akin in the Settlement Agreement) are fine" and August 14th communication by Mr. Martorana that this issue had been resolved, comply with the requirements of CPLR 2104.

169. Therefore, the Signatory Plaintiffs and Participating Unitholders contend that each and every one of the factors that courts use to determine whether a settlement is final under New York law show that the Settlement Agreement is binding on the GUC Trust.

VI. New GM Does Not Have Phase 1 Standing.

170. The Signatory Plaintiffs and Participating Unitholders contend that New GM does not have Phase 1 standing. The narrow Phase 1 issue before the Court is whether New GM has standing to be heard on whether the Settlement Agreement with the GUC Trust is a binding agreement. The evidence will show that New GM had no role in the Settlement negotiations, is neither a party to, nor a third-party beneficiary of, the Agreement, and has no direct financial stake in Phase 1. Thus, New GM lacks Phase 1 standing.

171. In order to have standing in Phase 1, New GM has the burden of demonstrating: (i) prudential standing; (ii) constitutional standing; *and* (iii) Bankruptcy Code Section 1109 standing. See Scott v. Residential Capital, LLC (In re Residential Capital, LLC), No. 14 CIV. 761, 2015 WL 629416, at *3 (S.D.N.Y. Feb. 13, 2015). The Signatory Plaintiffs and Participating Unitholders contend that New GM cannot meet a single one of these three standards and thus lacks standing to be heard.

172. It is well-settled that third-party, non-beneficiaries of a contract lack prudential standing to challenge the binding nature of that contract. See Premium Mortg. Corp. v. Equifax Info Servs. LLC, 583 F.3d 103, 108 (2d Cir. 2009); Shea v. Royal Enters., Inc., No. 09 Civ. 8709, 2011 WL 43460, at *3 (S.D.N.Y. Jan. 6, 2011). Moreover, third party non-beneficiaries may not adjudicate contractual issues even where a financial interest is at stake. See, e.g., Premium Mortg. Corp., 583 F.3d at 108 (holding that plaintiff, alleging that it suffered financial harm when credit bureaus resold plaintiffs' data to plaintiff's competitors, lacked standing to

assert claims for breach of the contracts between credit bureaus and the competitors because it was not a party to the contracts); Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, Nat'l Ass'n, 747 F.3d 44, 50 (2d Cir. 2014) (holding that lessor lacked prudential standing to litigate whether lessee's liabilities were assigned to bank under purchase and assignment agreement—and that, as result, the bank owed amounts due under the lease—because it was neither a party to nor a third-party beneficiary of the agreement).

173. The evidence is undisputed that New GM is not a party to the Settlement Agreement or an intended third-party beneficiary of the Agreement. New GM therefore lacks prudential standing in Phase 1. The Signatory Plaintiffs and Participating Unitholders contend that such a finding alone settles the question of New GM's Phase 1 standing.

174. New GM contends that it has a direct stake in Phase 1 sufficient to confer standing because the Settlement Agreement requires the parties to seek a Claims Estimate Order that would obligate New GM to issue additional shares of New GM common stock. However, any financial interest New GM may have in the outcome of Phase 2 does not warrant Phase 1 standing.

175. New GM also contends that its agreement with the GUC Trust that the Forbearance Agreement automatically terminates if the Settlement Agreement is held to be binding confers Phase 1 standing. Not so. Standing in contract disputes must be established by the express terms of the contract at issue. Cf. Coal. of 9/11 Families, Inc. v. Rampe, No. 04 Civ. 6941, 2005 WL 323747, at *2 (S.D.N.Y. Feb. 8, 2005). New GM cannot manufacture standing by claiming it will suffer an “injury” if the Forbearance Agreement terminates by operation of its agreed-upon terms.

176. With respect to Bankruptcy Code Section 1109 standing, a proposed participant who does not fall within the enumerated categories in the statute must (1) have a direct financial stake in the proceeding; and (2) must be either be a creditor or have some equitable claim against the estate. See Roslyn Sav. Bank v. Comcoach Corp. (In re Comcoach Corp.), 698 F.2d 571, 573-74 (2d Cir. 1983); In re Innkeepers USA Tr., 448 B.R. 131, 141-44 (Bankr. S.D.N.Y. 2011).

177. The evidence will show that, if the Settlement Agreement is held to be binding, the only resulting obligation is on the parties to file a joint motion for approval of the Settlement Agreement and the Claims Estimate Order under Bankruptcy Rule 9019, after obtaining an order approving notice procedures for this motion. See Settlement Agreement §§ 2.2, 2.9. No direct obligation is imposed on New GM in any outcome of Phase 1.

178. New GM contends that it has a direct stake in Phase 1 because if the Settlement Agreement is held to be binding, then the Forbearance Agreement automatically terminates and, in Phase 2, the Parties will seek a Claims Estimate Order and a notice procedures order requiring New GM's assistance in obtaining names of plaintiffs. In other words, New GM is trying to prevent Phase 2, which may impact its financial interests. That is not enough under controlling case law.

179. New GM also contends that it is inconsistent for the Participating Unitholders to have standing but not New GM. Not so. The Participating Unitholders are third-party beneficiaries of the Settlement Agreement, were part of the negotiation process, and are fact witnesses regarding the issue of whether the Settlement Agreement is binding.

180. In addition, New GM cannot meet the second factor for Bankruptcy Code Section 1109 standing because, as the evidence will show, New GM is neither a creditor of nor a holder of an equitable interest in the GUC Trust. The only claim against the GUC Trust that New GM

points to—Proof of Claim No. 71111—was a contingent administrative claim that was withdrawn.

181. Similar to Bankruptcy Code Section 1109 standing, constitutional standing does not exist where a third-party attempts to assert the rights of another on the grounds that the third-party may suffer tangential or future economic harm. See In re Caldor, Inc.-NY, 193 B.R. 182, 186 (Bankr. S.D.N.Y. 1996) (bank that was lender to the landlord of a site leased to debtor lacked constitutional standing to contest debtor-in-possession’s motion for order authorizing it to lease a new site).

182. New GM contends it has constitutional standing for the same reason it has Bankruptcy Code Section 1109 standing. However, any potential economic impact on New GM that may occur in Phase 2 based on future contingencies can hardly be understood as a direct interest and is insufficient to confer Phase 1 standing. See Clapper v. Amnesty Int’l USA, 568 U.S. 398, 401-402 (2013) (explaining that theory of future injury is “too speculative to satisfy the well-established requirement that threatened injury must be certainly impending”).

183. New GM cannot meet its burden to establish that it has Phase 1 standing. Accordingly, the Court should find that New GM has no standing to participate in Phase 1.

VII. The Signatory Plaintiffs Are Entitled To Attorneys’ Fees.

184. The Signatory Plaintiffs are entitled to attorneys’ fees and costs pursuant to Section 3.3, which provides that “[i]f any lawsuit or proceeding is required to enforce the terms of this Agreement, the prevailing party in any such lawsuit or proceeding shall be entitled to reasonable attorney’s fees and costs.” This provision encompasses the litigation over the binding nature of the Settlement Agreement.

Dated: December 5, 2017
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al.,

Debtors.

Chapter 11
Case No. 09-50026 (MG)
(Jointly Administered)

**CONTENTIONS OF FACT AND LAW OF GENERAL MOTORS LLC
AND MOTORS LIQUIDATION COMPANY GUC TRUST
RELATING TO PLAINTIFFS' MOTION TO ENFORCE
UNEXECUTED SETTLEMENT AGREEMENT**

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I. CONTENTIONS OF FACT¹

A. Facts Relevant To Factor 1 (Intent To Require Writing Signed By All Parties)

1. The Unexecuted Settlement Agreement was negotiated and drafted by highly sophisticated counsel.
2. Between June 6, 2017 and August 14, 2017, multiple drafts of the Unexecuted Settlement Agreement were exchanged among and reviewed by counsel for each of the GUC Trust, plaintiffs, and the unitholders.
3. In a draft of the Unexecuted Settlement Agreement dated June 9, 2017, Gibson Dunn purposely inserted § 3.1 to ensure the agreement only would become “effective and binding” if and when all parties signed the contract.²
4. Plaintiffs’ counsel and the unitholders’ counsel accepted and understood the import of § 3.1.³

¹ Capitalized terms not defined herein have the meanings ascribed to them in New GM’s Motion, Pursuant To 11 U.S.C. §§ 105(a) And 1109(b), Fed. R. Bankr. P. 2018 And 3020, And Pre-Trial Order, To Appear And Be Heard With Respect To Phase 1 Of Court’s Consideration Of Plaintiffs’ Enforcement Motion [ECF No. 14149] and the Joinder Of General Motors LLC In Motors Liquidation Company GUC Trust’s Objection To Plaintiffs’ Motion To Enforce Unexecuted Settlement Agreement [ECF No. 14172] (the “**Joinder**”). Citations to the “**Decl.**” refer to the Declaration of James C. Tecce filed concurrently with the Joinder [ECF No. 14173], and citations to “**GUC App.**” refer to the appendix submitted in connection with the Trust’s opposition [ECF No. 14170].

² Decl. Ex. F (AG0005147, at 5177 (June 9 email inserting § 3.1: “[t]his Agreement shall become effective and binding on the Parties on the date on which this Agreement is fully executed by each of the parties”)); Ex. G (Martorana Tr. 200:25-201:25 (explaining he added § 3.1 because “there were a number of provisions that it was unclear as to when they would, in fact, become effective and we determined that it should be clear that ... nothing in the agreement would become binding and effective until it was executed”)); Decl. Ex. E (Williams Tr. 98:21-99:5 (§ 3.1 was expression of GUC Trust intent that “document had to be signed before it was final”)).

³ See Decl. Ex. B (Weisfelner Tr. 87:17-23 (team became “aware of the desired addition of section 3.1 on or about June 9”), 89:7-9, 89:13-25 (“Q. ... [§ 3.1 is] reflected in the final settlement agreement because ... your team accepted it; correct? A. Everyone accepted all of the terms including that term, yes”), 91:7-21)); Decl. Ex. E (Williams Tr. 98:21-99:5, 200:1-14); Ex. C (Weintraub Tr. 71:17-72:7); Ex. D (Steel Tr. 92:7-19); Ex. G (Martorana Tr. 202:11-203:3).

5. The first sentence of § 3.1, which was inserted on June 9 and states “[t]his Agreement shall become effective and binding on the Parties on the date which this Agreement is fully executed by each of the Parties,” was never amended or removed from the Unexecuted Settlement Agreement at any point during the negotiations. The first sentence of Section 3.1 of the Plaintiffs’ Settlement Agreement in the June 9 Draft is identical to the first sentence of Section 3.1 in the Plaintiffs’ Settlement Agreement.⁴

6. The version of the Unexecuted Settlement Agreement that plaintiffs and the unitholders contend is binding on the GUC Trust contains § 3.1, contains a merger clause (§ 3.11), only can be amended “in a writing signed by all parties” (§ 3.12), provides for execution by delivery of signatures (§ 3.9), provides that New York law governs (§ 3.16), and contains performance obligations and termination rights that are triggered only if and when the agreement is signed by all parties (§§ 2.2, 2.9(a), 3.2(B)).

7. The provisions of the Unexecuted Settlement Agreement, including, without limitation, §§ 2.2, 2.9(a), 3.1, 3.2(B), 3.9, 3.11, and 3.12, reflect the parties’ objective intent that the agreement cannot become binding unless and until all parties affix their signatures.

8. Through the provisions of the Unexecuted Settlement Agreement, which were reviewed and accepted by counsel to the plaintiffs and the unitholders, all parties from and after June 9 expressed an objective intent that the draft agreement would not become binding unless and until all parties affix their signatures.

⁴ Compare Decl. Ex. F (AG0005147, at 5177 (June 9 email inserting § 3.1: “[t]his Agreement shall become effective and binding on the Parties on the date on which this Agreement is fully executed by each of the parties”)), with Decl. Ex. A (Unexecuted Settlement Agreement, § 3.1: “This Agreement shall become effective and binding on the Parties on the date on which this Agreement is fully executed by each of the Parties....”).

9. The Unexecuted Settlement Agreement was never signed by any party or their counsel and was never dated.⁵ No Settlement Document was ever signed by any party or their counsel nor ever dated.

10. Counsel for the GUC Trust never told either the plaintiffs' counsel or the unitholders' counsel that the GUC Trust had authorized its counsel to sign the Unexecuted Settlement Agreement.⁶

11. The GUC Trust never authorized its counsel to sign the Unexecuted Settlement Agreement.⁷

12. There has been no amendment or waiver of the requirement that the Unexecuted Settlement Agreement had to be signed by all parties to be binding and effective, and any amendment or waiver of § 3.1 must be in writing and signed by all parties pursuant to §§ 3.11 and 3.12.

13. When the terms of the Unexecuted Settlement Agreement were negotiated, no counsel or party ever expressed an intention to amend or waive § 3.1 or any other provisions in the Unexecuted Settlement Agreement related to the signature requirement.⁸

⁵ See Decl. Ex. B (Weisfelner Tr. 22:13-16, 28:11-14, 30:5-17, 31:4-14, 34:3-5, 35:2-4, 65:23-66:5); Ex. C (Weintraub Tr. 13:12-15, 56:8-17); Ex. D (Steel Tr. 22:4-10, 28:1-11); Ex. E (Williams Tr. 191:21-193:20).

⁶ See GUC App. Ex. 6 (Weisfelner Dep. 105:1-6 (“Q. And what Mr. Martorana was indicating was that they were unlikely to have final approval from their client on August 14 of 2017; correct? A. That’s the word – those are the words that he uses, yes.”)); GUC App. Ex. 10 (Golden Tr. 209:14-210:9 (stating that neither Matt Williams nor Keith Martorana ever told Daniel Golden they had been given permission to manually sign the settlement agreement)).

⁷ See Decl. Ex. U (Andrews Tr. 108:12-15 (“My statement is that the GUC Trust is signed off on the form of the documents. I am not giving him authority to sign the document.”)); GUC App. Ex. 11 (Andrews Tr. 156:14-15 (“I did not authorize Mr. Williams or Mr. Martorana to sign [the Unexecuted Settlement Agreement], no.”)); GUC App. Ex. 5 (Martorana Tr. 203:8-10 (“Q. Did Beth Andrews ever authorize you to sign the agreement? A. No, she did not.”)).

⁸ See Decl. Ex. E (Williams Tr. 200:1-14 (no one ever communicated “that the agreement would become effective and binding on the parties even if was not signed”)); Ex. C (Weintraub Tr. 71:17-72:7 (witness never told anyone, and was not told by anyone that “the settlement agreement would become effective and binding before it was signed”)); Ex. D (Steel Tr. 92:7-19 (Martorana never told Steel “he was waiving the requirement of section 3.1,

14. When the terms of the Unexecuted Settlement Agreement were negotiated, no counsel to the plaintiffs nor counsel to the GUC Trust ever stated they intended for the Unexecuted Settlement Agreement to be binding without all parties affixing their signatures to the document.

15. When the terms of the Unexecuted Settlement Agreement were negotiated, plaintiffs' counsel commented on a different part of § 3.1 but left the execution requirement in the first sentence of the section unchanged.⁹

16. When negotiating the terms of the Unexecuted Settlement Agreement, plaintiffs' counsel did not use the term "ministerial" to refer to the act of obtaining parties' signatures to the agreement.¹⁰

17. Plaintiffs' counsel attempted, before and after August 14, through several written requests, to gather signatures and obtain a fully-signed copy of the Unexecuted Settlement Agreement.¹¹

that the document not become binding until it full execution"); Ex. B (Weisfelner Tr. 91:7-21 (parties never said agreement would become effective before being signed)); Ex. G (Martorana Tr. 202:11-23 (never told signing was "ministerial act" or that agreement would be effective without signatures)).

⁹ See Decl. Ex. H (GUC_0003887, at 3890 (July 10 email from plaintiffs' counsel proposing modifications to § 3.1 that would not change first sentence: "section 3.1 must be similarly modified to have all the releases and waivers triggered by entry of the Settlement Order")).

¹⁰ Decl. Ex. B (Weisfelner Tr. 64:14-20, 99:22-100:4 (unable to recall using phrase "ministerial step")); GUC App. Ex. 14 (Steel Tr. 114:-115:4 ("never used" the words "ministerial matter" to Gibson Dunn)); Ex. 5 (Martorana Tr. 202:12-17 (no party ever conveyed that "they viewed the addition of signatures to be a merely ministerial act")).

¹¹ Decl. Ex. B (Weisfelner Tr. 6:9-47:14). Compare Ex. D (Steel Tr. 17:18-24 (referring to signing as "ministerial")), with Ex. I (GUC_0001558 (Aug. 11 Steel email asking when "we can schedule signatures")); Ex. J (GUC_0001341 (Aug. 14 email stating "[w]e will update accordingly and send execution drafts as soon as possible")); Ex. K (GUC_0005638, at 5641 (Aug. 14 email sending "proposed final execution versions")); Ex. L (GUC_0005630 (Aug. 16 email asking "[w]hen are we actually signing the agreement / would think before the conference"))).

18. Plaintiffs' counsel's attempt to gather signatures to the Unexecuted Settlement Agreement confirms their understanding that signatures were required for the agreement to be binding.

19. When negotiating the terms of the Unexecuted Settlement Agreement, it was anticipated, intended, understood, and agreed by all counsel and parties that a final document would in fact have to be signed.¹²

20. In their communications with each other and with the Bankruptcy Court and the MDL 2543 Court, the GUC Trust's counsel, plaintiffs' counsel, and the unitholders' counsel repeatedly described the draft agreement as "proposed."¹³

21. The emails exchanged among all the negotiating lawyers state repeatedly that drafts are subject to further review and to comment and approval from clients.

22. Counsel to each of the GUC Trust, plaintiffs, and the unitholders included in their emails exchanging comments to or drafts of the Unexecuted Settlement Agreement a disclaimer stating, in sum and substance, that drafts remained "subject to ongoing review and comment from our clients."¹⁴

23. No later than July 27, 2017, the GUC Trust's counsel clearly communicated to plaintiffs' counsel and the unitholders' counsel the distinction between their approval of the form

¹² GUC App. Ex. 6 (Weisfelner Tr. 46:9–15 ("Q. Was it anticipated by you in August of 2017 that manual ink signatures would at some point be placed on pages nineteen and twenty of [Unexecuted Settlement Agreement]? A. To the extent I ever thought about it, yes.")).

¹³ Decl. Ex. Q (BR005531 (Aug. 14 email (referring to "proposed settlement"))); Ex. K (GUC_0005638, at 5641 (Aug. 14 email sending "proposed final execution versions")); Ex. R (Aug. 17 letter from unitholder counsel to Court referring to "final proposed settlement"); Ex. S (GUC_0013900 (Aug. 16 email (same))); Ex. NN (Tr., Aug. 11 MDL 2543 Conf. 38:11-15 (plaintiffs' counsel referring to "proposed settlement"))).

¹⁴ GUC App. Ex. 3 (Weisfelner Decl. Ex. A, at 1 (August 3 email (attached document "remains subject to the ongoing review and comment of our client"))); GUC App. Ex. 12 (Golden Decl. Ex. A, at AG0000240 (August 8 email (same))); GUC App. Ex. 8 (GUC_0011029 (June 9 email (stating "the attached markup remains subject to further review and revision in all respects"))).

of the documents and the GUC Trust's agreement and ultimate assent to the deal—the latter of which only would be provided by actually signing the document.¹⁵

24. The GUC Trust's counsel told plaintiffs' counsel on the evening of August 14 that final client sign-off had not been obtained.¹⁶

25. Counsel to plaintiffs and the unitholders have testified to four different dates when the agreement allegedly became binding.¹⁷

26. According to plaintiffs' sworn interrogatory answers, the agreement became binding on the parties by no later than August 12, 2017.¹⁸

27. Counsel to plaintiffs and the unitholders do not agree whether the purported agreement they claim is binding on the GUC Trust is a written or an oral one.¹⁹

¹⁵ See Decl. Ex. T (GUC_0003459, at 3462 (July 27 email stating “[s]ign-off, with respect to the three documents (Settlement Agreement, Settlement Order, Claims Estimate Order), will likely come tomorrow. We’ll keep you posted. Note, however, that signoff on the settlement itself is subject to the finalization of all other document[s] in a satisfactory manner and receipt of final approvals”)); Ex. U (Andrews Tr. 108:12-15 (“My statement is that the GUC Trust is signed off on the form of the documents. I am not giving him authority to sign the document.”)); Ex. E (Williams Tr. 103:19-20, 104:22-24, 186:2-24, 187:21-188:6, 191:21-193:20, 200:15-201:9 (“Q. To your mind, is there a difference between agreeing to the form of the documents and agreeing to transaction they may or may not reflect? ... A. Yes, you would agree to the transaction when we signed the documents indicating you’re bound to it.”)); Ex. G (Martorana Tr. 203:8-18 (never received client authority to sign), 79:15-80:14 (explaining signoff on documents versus “actual entire corpus of the settlement”)).

¹⁶ See Decl. Ex. K (GUC_0005638, at 5640 (Aug. 14 email stating “[a]t this point we do not have any further comments, but are obtaining final sign-off from our client”), 5638 (Aug. 14 email stating “[w]e are waiting for final approval from client, but unlikely to come tonight. You are, however, authorized to send current versions to New GM this evening”)).

¹⁷ See Decl. Ex. B (Weisfelner Tr. 24:15-19 (August 12-13)); Ex. HH (Golden Tr. 130:13-20 (August 9)); Ex. D (Steel Tr. 51:15-52:2, 68:5-66:9 (July 28)); Ex. C (Weintraub Tr. 76:24-77:11 (August 12-14)).

¹⁸ See Ex. X (PIWD Plaintiffs’ Counsel Supp. Obj. And Resp. No. 1 (August 12)).

¹⁹ See GUC App. Ex. 10 (Golden Tr. 208:14-24 (was both oral and written agreement with same terms)).

28. The drafts of the Unexecuted Settlement Agreement changed between July 28 and August 14, including by adding new signatory parties and adjusting the amount of the notice cap.²⁰

29. The GUC Trust's August 14 Form 10-Q did not report that a settlement agreement had been reached with plaintiffs and instead stated only that negotiations were ongoing.²¹

30. Had a binding agreement with plaintiffs been reached as of August 14, GUC Trust would have disclosed it in the Form 10-Q filed on that day.²²

31. The GUC Trust has never made a filing with the Securities and Exchange Commission indicating it entered into a final and binding settlement agreement with any plaintiff.

32. The GUC Trust has never publically communicated that it reached a final and binding settlement agreement with any plaintiff.

33. During and after the meeting on August 15 among counsel to New GM and counsel to the GUC Trust, New GM's counsel asked counsel to the GUC Trust whether it had entered into a binding contract; and, counsel for the GUC Trust responded that the Unexecuted Settlement Agreement had not been signed and therefore no binding contract yet existed.²³

²⁰ Compare GUC_0003520, 3538 (capping notice costs at \$5 million), and GUC_0003544-45 (listing the signatory parties), with GUC App. Ex. 3 at 74 (capping notice costs at \$6 million), and 81 (adding Andrews Myers, P.C. to the signatory parties).

²¹ Decl. Ex. M, at GUC_0010611 (Aug. 14 Form 10-Q (noting trust was "engaged in discussions ... regarding ... certain issues underlying the Late Claims Motions. Such discussions have meaningfully progressed and remain ongoing").

²² Decl. Ex. E (Williams Tr. 138:24-139:1 ("If we thought we had a binding deal, we would have put that in [the] 10-Q that we had a binding deal.")).

²³ GUC App. Ex. 22 (Williams Tr. 128:15-20 (stating he told New GM "[w]e do not have a binding agreement")).

34. After counsel to the GUC Trust shared a draft of its August 16 letter to the Court with counsel to plaintiffs and counsel to the unitholders stating the “Proposed Settlement is nearly final, but has not yet been executed by the parties and is not binding,” neither plaintiffs’ counsel nor the unitholders’ counsel objected to that characterization of the alleged agreement; instead, plaintiffs’ counsel remarked in a responding email that its draft letter to the Court “says a lot of the same.”²⁴

35. Plaintiffs’ stated position that the binding date of the agreement was “no later than August 12” is inconsistent with events that transpired after that date, including (a) the August 14 10-Q stating negotiations were ongoing; (b) plaintiffs’ counsel’s distribution of another version of the Unexecuted Settlement Agreement and request for comments on August 14; (c) the parties’ providing additional comments on August 14; (d) plaintiffs’ counsel’s request for signatures on August 14; (e) email exchanges requesting further discussion of issues such as notice procedures and class certification before the Court conference; (f) the statement by GUC Trust Counsel to counsel for New GM on August 15 that a binding agreement with plaintiffs had not been reached; (g) GUC Trust counsel’s letter to the Bankruptcy Court dated August 16 stating the purported agreement was not binding- shared with counsel to plaintiffs and the unitholders (neither of who objected to that characterization); and (h) plaintiffs’ counsel’s request for signatures on August 16.²⁵

²⁴ Decl. Ex. N (GUC_0000905 (Aug. 16 email attaching draft letter)); Ex. O (GUC_0000898 (Aug. 16 email from plaintiffs’ counsel saying its letter “says a lot of the same”)); Ex. JJ (GUC_0013946 (Aug. 16 email forwarding letter to unitholder counsel)).

²⁵ Decl. Ex. J (GUC_0001341, at 1344 (Aug. 9 email referring to addition of new parties represented by Andrews Myers, P.C.), 1342 (Aug. 12 email referring to open issues between GUC Trust and unitholders)); Ex. CC (GUC_0001904 (Aug. 10 email stating “on the verge of being done”)); Ex. DD (GUC0001792 (Aug. 11 email referring to “a walk away issue” being open)); Ex. M, at GUC_0010611 (Aug. 14 Form 10-Q); Ex. J (GUC_0001341 (Aug. 14 email stating “[w]e will update accordingly and send execution drafts as soon as possible”)); Ex. K (GUC_0005638, at 5641 (Aug. 14 email sending “proposed final execution versions” and requesting “comments or questions”)); Ex. L (GUC_0005630 (Aug. 16 email asking “[w]hen are we actually signing

B. Facts Relevant To Factor 2 (No Agreement On Material Terms)

36. The Unexecuted Settlement Agreement requires in § 3.17 that each party has been “represented by an attorney with respect to this Agreement” who has “been duly authorized” by each party to sign the alleged agreement on its behalf.

37. The lawyers for the plaintiffs whose names appear on the signature pages of the Unexecuted Settlement Agreement represent only a very small fraction of the millions of purchasers of Old GM vehicles who would be barred by the release and waiver provisions from further proceedings against the GUC Trust if the Unexecuted Settlement Agreement was found to be binding and ultimately approved by the Bankruptcy Court.

38. Hagens Berman Sobol Shapiro LLP and Lief Cabraser Heimann & Bernstein, LLP represent only two individuals who filed motions for authorization to file late proofs of claim.²⁶

39. Two other proposed signatory counsel (Brown Rudnick LLP and Goodwin Procter LLP) did not represent individual plaintiffs; rather, Brown Rudnick LLP was engaged solely by Hagens Berman Sobol Shapiro LLP and Lief Cabraser Heimann & Bernstein, LLP, and Goodwin Procter LLP purports to have been engaged solely by Hilliard Munoz Gonzalez LLP and the Law Offices of Thomas J. Henry.²⁷

the agreement / would think before the conference”); GUC App. Ex. 22 (Williams Tr. 128:15-20 (stating he told New GM “[w]e do not have a binding agreement”)); Decl. Ex. N (GUC_0000905 (Aug. 16 email attaching draft letter)); Ex. JJ (GUC_0013946 (Aug. 16 email forwarding letter to unitholder counsel)); Decl. Ex. EE (BR006032 (Aug. 15 email referring to class certification issue)); Ex. FF (GUC_0000904 (Aug. 16 email (same))); Ex. GG (GUC_0000888 (Aug. 16 email (same))).

²⁶ See Decl. Ex. V (Hagens engagement letters), Ex. B (Weisfelner Tr. 39:1-3 (“Q. Were you acting on behalf of a class that was certified? A. No”)). See also Dkt. No. 14128-1 (Letter to Judge Furman (unexecuted agreement makes “assertions regarding the meaning of this Court’s Order No. 8 appointing Plaintiffs Co-Lead Counsel in MDL 2543 and the authority of Co-Lead Counsel to represent and settle the purported claims of millions of non party individuals based on that order”)).

²⁷ See Decl. Ex. Z (Brown Rudnick engagement letter); Ex. B (Weisfelner Tr. 82:11-84:24 (authority derived from counsel)), Ex. C (Weintraub Tr. 10:11-23, 18:18-19:8 (needed co-counsel’s authority to sign)).

40. PIWD Counsel Hilliard Munoz Gonzalez LLP purports to represent no more than 175 individuals—and possibly much less than 175 individuals considering its recent motion in MDL 2543 (under seal) to terminate their representation of certain plaintiffs, which the MDL Court granted, and a related notice filed in this action withdrawing as counsel for numerous plaintiffs that moved for authority to file late proofs of claim, filings that concede the parties to the proposed agreement have changed.²⁸

41. PIWD Counsel Andrews Myers, P.C., in conjunction with other counsel, purports to represent approximately 347 individuals.²⁹

42. Plaintiffs either (a) were not aware of the settlement negotiations, (b) were not sent drafts of the agreement, (c) were not informed of its particular terms, (d) never provided their written consent to the proposed settlement, or (e) did not give specific authorization to sign the Unexecuted Settlement Agreement.³⁰

²⁸ See GUC App. Ex. 15 (Weintraub Tr. 22:5–8 (stating that Goodwin Procter has filed “between one hundred seventy-five and two hundred and something” proofs of claim for clients of [HMG] whose interests are at issue)); In re General Motors LLC Ignition Switch Lit., No. 14-MD-2543 (JMF) (S.D.N.Y. Oct. 26, 2017) (Dkt. No. 4769) (Mot. For Order Permitting Submission Of Supp. Decl. In Support Of Mot. To Withdraw Under Seal And In Camera, filed by Hilliard Martinez Gonzales LLP and Thomas J. Henry Injury Attorneys), (Dkt. No. 4840 (Order granting motion)); see also id. (Dkt. No. 14179) (Not. Of Withdrawal as Counsel of Record for Certain Movants under Omnibus Mot. by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths [Dkt. No. 13807], filed by Goodwin Procter LLP).

²⁹ See Dkt. No. 14018 (Mot. to Allow Claims filed by Lisa M Norman on behalf of Additional Ignition Switch Pre-Closing Accident Plaintiffs); Dkt. No. 14046 (First Supp. to Mot. By Additional Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths); Dkt. No. 14112 (Second Supp. to Mot. By Additional Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths).

³⁰ See Decl. Ex. W (Economic Loss Pl.’s Supp. Resp. No. 1 (“Counsel did not expressly inform claimants that they were negotiating these particular terms”), No. 2 (“Counsel did not seek claimants’ written consent to the terms of the contract or proposed settlement”), No. 4 (“Counsel did not send drafts of the contract or the proposed settlement to claimants”)); Ex. B (Weisfelner Tr. 44:20-24 (conceding no client authority and relying instead on notice procedures), 48:18-51:11, 79:13-80:21 (no discussions with, or authorizations from, named plaintiffs)); Ex. X (PIWD Counsel Supp. Resp. No. 12, 13 (did not send drafts of agreement to HMG Claimants), No. 11); Ex. Y (Additional Ignition Switch Pre-Closing Accident Pl.’s First Supp. Obj. and Resp. Nos. 10-13); Ex. KK (Mosley Tr. 17:4-9 (never saw agreement), 25:8-16 (never told counsel to sign and gave only general authority)); Ex. LL (Barton Tr. 22:9-14 (gave counsel general authority when engaged)).

43. The Unexecuted Settlement Agreement was negotiated principally by attorneys located in New York, including Edward Weisfelner, Howard Steel, William Weintraub, Matthew Williams, Keith Martorana, Daniel Golden, Debra Newman, and Naomi Moss.

44. The Unexecuted Settlement Agreement purports to resolve claims asserted in New York courts.

45. As early as July 2017, plaintiffs' counsel and the unitholders' counsel discussed having the notice procedures "blessed" by the Bankruptcy Court before noticing the settlement motion to millions of individuals.³¹

46. During the negotiations, despite having filed putative class proofs of claim, plaintiffs' counsel would not agree to seek certification of one or more classes of persons pursuant to Fed. R. Civ. P. 23; the GUC Trust only agreed to forgo class treatment if the Court would accept it.³²

47. Counsel to plaintiffs, the unitholders, and the GUC Trust agreed in early August 2017 to schedule a chambers conference with the Bankruptcy Court to preview the Unexecuted Settlement Agreement.³³

48. The GUC Trust and its counsel decided to not execute the draft agreement until after the August 17 conference in order to first obtain the Bankruptcy Court's reaction to possible infirmities in the settlement's substance, namely the use of the \$10 billion estimate for

³¹ Decl. Ex. II (GUC_0004498, at 4502 (July 10 email: "[W]e need to have the form of notice blessed before we give it [T]his requires a separate motion re notice procedures and deadlines. Why spend the money on notice only to find out at the hearing that Judge Glenn does not like what we did").

³² See GUC App. Ex. 22 (Williams Tr. 240:7-15 ("[W]e were hopeful that the plaintiffs were going to have a plan to deal with [the absence of class certification] at the status conference").

³³ See GUC App. Ex. 22 (Williams Tr. 145:10-20 (stating that the parties had scheduled the August 17 conference a couple weeks before)).

late filed claims and the attempt to bind millions of unknown individuals who have never filed any claims without the protections afforded by class certification under Fed. R. Civ. P. 23.³⁴

49. The GUC Trust and its counsel did not intend to execute the Unexecuted Settlement Agreement until after the August 17 conference regardless of whether it ever negotiated an agreement with New GM.³⁵

50. Like counsel to the GUC Trust, counsel to the unitholders intended to use the Bankruptcy Court's August 17 status conference as an opportunity to preview the settlement, including its notice procedures, and to assess the Bankruptcy Court's reaction.³⁶

51. According to counsel to the unitholders, to the extent the Bankruptcy Court directed at the August 17 conference that changes needed to be made to the proposed settlement, then the Unexecuted Settlement Agreement would have been revised to address the Court's concerns.³⁷

³⁴ See Decl. Ex. E (Williams Tr. 186:2-15 (intended at conference to give deal overlay: “[t]o the extent that the Judge had significant concerns about the deal, whether it be the \$10 billion claim or whether it be the lack of the Rule 23 or any of myriad of issues that he might, depending on what the judge said about those we may or may not have signed that agreement”)); 187:21-188:6 (“[T]o the extent ... the [J]udge didn’t raise any significant issues, we were intending to sign the agreement. To the extent the Judge raised huge issues and said you’ve got a Rule 23 problem here or you’ve got a \$10 billion claim I’m never going to allow, at that time we didn’t intend on signing.”); Ex. U (Andrews Tr. 158:10-22 (same)); Ex. G (Martorana Tr. 204:7-23 (same)). See also GUC App. Ex. 22 (Williams Tr. 147:22–148:4 (“From our point of view ... one of the big benefits of that settlement conference was going to be we were going to be able to take the judge’s temperature as to whether or not he thought the deal made sense.”)).

³⁵ See Decl. Ex. E (Williams Tr. 191:21-192:3 (“[O]ur intention was not to sign the agreement until after—even if we didn’t have anything from [N]ew GM, if [N]ew GM had never shown up, our intention was at least to wait until after that status conference.”)); GUC App. Ex. 5 (Martorana Tr. 208:20-208:24 (would not sign until after August 17)).

³⁶ Decl. Ex. OO (Tr., Hearing, Aug. 17 at 27:21-24 ([UNITHOLDER COUNSEL:] “[t]he purpose of scheduling a status conference ... was to preview the settlement, not to argue the merits, but really to preview the noticing procedures”), 28:11-15 (“[W]e wanted to get a sense from Your Honor before we went out and spent \$6 million whether Your Honor thought that would be an appropriate scope of notice.”)). See also GUC App. Ex. 15 (Weintraub Tr. 63:18-23)).

³⁷ See GUC App. Ex. 10 (Golden Tr. 208:5-13 (noting it “would behoove all the parties ... to evaluate what the [J]udge said and make a determination whether it required any further changes”)).

52. In emails dated August 15 and August 16, GUC Trust counsel conveyed the issues that were likely to be raised at the August 17 status conference relating to class certification and notice to plaintiffs' counsel.³⁸

53. New GM and the GUC Trust have entered into the Forbearance Agreement, which by its own terms will terminate automatically if the Bankruptcy Court determines the Unexecuted Settlement Agreement is binding on the GUC Trust.³⁹

C. Facts Relevant To Factor 3 (Signed Writing Required)

54. The Unexecuted Settlement Agreement states in § 2.3 that the motion to approve the agreement, and the motion to approve the notice provisions relating to the agreement, will not be filed until the settlement is signed by all the parties.

55. Plaintiffs' counsel has acknowledged the Unexecuted Settlement Agreement is the type of agreement that would need to be signed before being presented to the Court.⁴⁰

56. Mr. Martorana's electronic signature block, where annexed to his emails from his Gibson Dunn email address, is annexed automatically.⁴¹

³⁸ Decl. Ex. FF (GUC_0000904 (Aug. 16 email requesting "update on class cert issue discussed the other day")); Ex. O (GUC_0000898 (Aug. 16 email: "We are gonna add 'and preview potential notice procedures' [to Court letter]")); Ex. EE (BR006032 (Aug. 15 email referring to class certification issue)); Ex. FF (GUC_0000904 (Aug. 16 email (same))); Ex. GG (GUC_0000888 (Aug. 16 email (same))).

³⁹ See, e.g., Dkt. No. 14095, Ex. A § 4.1(a)(v)).

⁴⁰ See GUC App. Ex. 6 (Weisfelner Tr. 47:2-14 ("I think that motions and related papers including the settlement agreement ultimately, as a matter of record, as a ministerial act, needed to be signed")); GUC App. Ex. 14 (Steel Tr. 25:11-15 ("[W]hen we presented the documents to the judge, we would gather the electronic signatures affixed")).

⁴¹ See Decl. Ex. G (Martorana Tr. 206:19-207:4 (signature block is affixed automatically to emails)).

57. None of the GUC Trust emails cited in support of the Enforcement Motion or the unitholders' joinder thereto include a formally typed signature by the GUC Trust's counsel to the Unexecuted Settlement Agreement.⁴²

D. Facts Relevant To Factor 4 (No Partial Performance)

58. While the Unexecuted Settlement Agreement sets forth obligations on the GUC Trust and plaintiffs to provide certain consideration, no consideration was ever provided under the agreement.⁴³

59. The lack of signatures to the Unexecuted Settlement Agreement renders several sections materially incomplete or meaningless.⁴⁴

60. The GUC Trust (or its counsel) never stated before the MDL 2543 Court or the Bankruptcy Court that the GUC Trust accepted the terms of the Unexecuted Settlement Agreement or agreed to be bound by them.⁴⁵

61. The GUC Trust did not authorize anyone to discuss the proposed settlement at the August 11, 2017 MDL conference.

⁴² See Dkt. No. 14093 (Weisfelner Decl. In Supp. Enforcement Mot., Exs. A–F (emails from Keith Martorana that do not contain a typed signature); Dkt. No. 14154 (Golden Decl. In Supp. Joinder, Exs. A–C, F, J–K (same))).

⁴³ See Decl. Ex. A (Unexecuted Settlement Agreement §§ 2.2 (requiring the parties “[a]s soon as practicable following the execution of this Agreement” to “file” a “Settlement Motion” and “Claims Estimate Order”), 2.3(a) (requiring GUC Trust to pay \$15 million within five days of effective date), 2.3(b) (imposing waiver and release of all plaintiffs’ claims), 2.9(a) (requiring GUC Trust to provide nationwide public notice and fund \$6 million of notice costs), 3.2(B) (“This Agreement shall be terminable ... on or before 30 days after execution of this Settlement Agreement”)).

⁴⁴ See Decl. Ex. A (Unexecuted Settlement Agreement §§ 3.2(B) (“This Agreement shall be terminable . . . on or before 30 days after execution of this Settlement Agreement”), 2.2 (“as soon as practicable following the execution of this Agreement, the parties shall file” a “Settlement Order” and “Claims Estimate Order”), 2.9 (“[a]s soon as practicable after the execution of this Agreement”)).

⁴⁵ Ex. NN (Tr., Aug. 11 MDL 2543 Conf. 38:11-15 (plaintiffs’ counsel referring to “proposed settlement”)).

62. GUC Trust attorneys did not enter an appearance at the MDL 2543 status conference on August 11 before Judge Furman but instead participated through a “listen-only” telephone line without speaking capability.

63. The GUC Trust decided prior to the August 17 conference before the Bankruptcy Court that it would not proceed with the Unexecuted Settlement Agreement.

64. The material terms of the Unexecuted Settlement Agreement and the GUC Trust’s acceptance of those terms were not stated on the record at the August 17 status conference before the Bankruptcy Court.⁴⁶

65. Counsel to the unitholders advised the Bankruptcy Court during the August 17 status conference that the Unexecuted Settlement Agreement was not being submitted for approval at that conference, that the conference was non-substantive, and that conference only was intended to preview the alleged settlement and the notice procedures to gauge the Court’s reaction thereto.⁴⁷

II. CONTENTIONS OF LAW

A. New York Law Governs Question of Whether Binding Agreement Exists

66. The question of whether the Unexecuted Settlement Agreement is binding on the GUC Trust is governed by New York law.⁴⁸

67. Whether the Court applies the four factors enunciated in Winston v. Mediafare Entm’t Corp., 777 F.2d 78, 80 (2d Cir. 1985) or basic contract law, e.g., 22 N.Y. Jur 2d

⁴⁶ See Decl. Ex. OO (Tr., Hearing, Aug. 17).

⁴⁷ Decl. Ex. OO (Tr., Hearing, Aug. 17 at 27:21-24 ([UNITHOLDER COUNSEL:] “[t]he purpose of scheduling a status conference . . . was to preview the settlement, not to argue the merits, but really to preview the noticing procedures”), 28:11-15 (“[W]e wanted to get a sense from Your Honor before we went out and spent \$6 million whether Your Honor thought that would be an appropriate scope of notice.”)).

⁴⁸ See Enforcement Mot. ¶ 34 (“The enforceability of the Settlement Agreement is governed by New York law.”) (citing Unexecuted Settlement Agreement § 3.16)).

Contracts § 9 (enforceable agreement requires “an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound”), the Unexecuted Settlement Agreement is not binding on any party.

68. The four Winston factors are “(1) whether there has been an express reservation of the right not to be bound in the absence of a writing; (2) whether there has been partial performance of the contract; (3) whether all of the terms of the alleged contract have been agreed upon; and (4) whether the agreement at issue is the type of contract that usually is committed to writing.”⁴⁹

B. Factor 1: Express Terms Of Purported Agreement Reflect Stated Intent That Agreement Will Not Become Binding Unless Signed By All Parties

69. Under the facts presented, the first Winston factor is outcome determinative.⁵⁰

70. The Second Circuit’s emphasis on the first Winston factor derives from the strict requirement of New York law that settlements must be reduced to signed writings—a principle that promotes the policy of fostering secure and candid settlement negotiations without fear that parties will become unwittingly or prematurely bound.⁵¹

⁴⁹ Winston, 777 F.3d at 80.

⁵⁰ See Kaczmarcysk v. Dutton, 414 F. App’x 354, 355 (2d Cir. 2011) (noting significance of first Winston factor); RKG Holdings, Inc. v. Simon, 182 F.3d 901, 901 (2d Cir. 1999) (noting action “can be dismissed solely on the basis of [this] express reservation” relevant to first Winston factor); R.G. Group, Inv. v. Horn & Hardart Co., 751 F.2d 69, 75 (2d Cir. 1984) (“[C]onsiderable weight is put on a party’s explicit statement that it reserves the right to be bound only when a written agreement is signed.”); H&R Block Tax Servs., LLC v. Strauss, 2016 WL 5107114, at *4 (N.D.N.Y. Sept. 20, 2016) (linkage of contractual obligations to execution date reflects intent to require signatures; “where there is a writing between the parties showing that one party did not intend to be bound, a court need look no further than the first [Winston] factor”); Nieves v. Cmty Choice Health Plan of Westchester, Inc., 2011 WL 5531018, at *2 (S.D.N.Y. Nov. 14, 2011) (“[I]f ... a party states its intent not to be bound until the agreement is fully executed, that fact is determinative”).

⁵¹ See N.Y. C.P.L.R. § 2104 (requiring settlements to be reduced to properly subscribed writings); Ciaramella v. Reader’s Digest Ass’n, 131 F.3d 320, 324 (2d Cir. 1997), 131 F.3d 320, 323 (“Enforcing premature oral settlements against the expressed intent of the parties will not further a policy of encouraging settlements. People may hesitate to enter into negotiations if they cannot control whether and when tentative proposals become binding.”); Winston, 777 F.2d at 80 (“Because of this freedom to determine the exact point at which an agreement becomes binding, a party can negotiate candidly, secure in the knowledge that he will not be bound until execution.”); R.G. Group, 751 F.2d at 71 (“[W]hen experienced business[persons] and lawyers are told explicitly

71. Under New York law, the provisions of the Unexecuted Settlement Agreement, including, without limitation §§ 2.2, 2.9(a), 3.1, 3.2(B), 3.9, 3.12, 3.16, irrefutably establish the parties' objective intent that the agreement cannot become binding unless and until all parties affix their signatures.⁵²

72. The parties' intent as reflected in the provisions of the Unexecuted Settlement Agreement is corroborated further by the absence of any record evidence revealing an intent to amend or waive the signature requirement in the Unexecuted Settlement Agreement.⁵³

73. Satisfaction of the first Winston factor, that the terms of the Unexecuted Settlement Agreement reflect a stated intent that the agreement will not become binding unless signed by all parties, is outcome determinative and compels a finding that the Unexecuted Settlement Agreement is not binding on any party.

and clearly that a major and complex agreement will be binding only when put in writing, then they should be rather cautious about assuming something different.”).

⁵² See Ciaramella, 131 F.3d at 324 (no binding agreement even though parties stated “we have a deal” when draft agreement would not become effective until “signed by [all parties];” that provision and merger clause were a clear indication “the parties did not intend to bind themselves until the settlement had been signed” and were given “considerable weight ... [to] avoid frustrating the clearly-expressed intentions of the parties”); Kaczmarcysk, 414 F. App'x at 355 (“[W]ording in a settlement agreement that places great significance on the execution date evinces an intent not to create a binding settlement until some formal date of execution”); RKG, 182 F.3d at 901 (draft agreement stated it would have “no binding force unless and until it was signed”); Reprosystem, B.V. v. SCM Corp., 727 F.2d 257, 262 (2d Cir. 1984) (mutual intent not to be bound was “conclusively establish[ed]” when parties accepted drafts of proposed contracts stating agreement would be binding when executed); H&R Block, 2016 WL 5107114, at *4 (linkage of contractual obligations to execution date reflects intent to require signatures); Smith v. Haag, 2015 WL 866893, at *5 (W.D.N.Y. Mar. 2, 2015) (no intent to be bound when stipulation tied payment obligation to date agreement was “fully executed” and approved); Balaban-Krauss v. Exec. Risk Indem., Inc., 2014 WL 2927289, at *3 (N.D.N.Y. June 27, 2014) (merger clause persuasive evidence of intent to require signed writing); Nieves, 2011 WL 5531018, at *2 (merger clause indicated intent to not be bound); Davidson Pipe Co. Inc. v. Laventhol & Horwath, 1986 WL 2201, at *3 (S.D.N.Y. Feb. 11, 1986) (noting obligations were triggered by execution date).

⁵³ See Ciaramella, 131 F.3d at 325 (noting no evidence of “an explicit waiver of the signature requirement”); R.G. Group, 751 F.2d at 76 (“There never was a written modification of the requirement that the contract be in writing” and no party ever “discussed dropping the writing requirement”); Nieves, 2011 WL 5531018, at *3-4 (rejecting argument that parties intended “to be bound by their oral and informal agreements ... [as being] based on ex post facto evidence that attempts to divine the parties' intentions during the negotiations”).

74. New York law does not permit courts, when interpreting a contract, to ignore or rewrite provisions based on equities.⁵⁴

75. New York law does not permit courts, when interpreting a contract, to consider the subjective, unexpressed intent of parties to the purported agreement (or that of their counsel) for the purpose of (a) proving the existence of a binding written agreement, (b) amending or removing unambiguous provisions, or (c) proving a waiver of written provisions.⁵⁵

76. Repeated references to the alleged settlement agreement as “proposed” in counsels’ communications among each other and to the Bankruptcy Court and the MDL 2543 Court confirm the agreement was not binding and instead was a mere draft or proposal.⁵⁶

77. The GUC Trust’s counsel’s communications to plaintiffs’ counsel and the unitholders’ counsel that the documents remain subject to ongoing client review confirms the GUC Trust’s intent to not be bound absent a signed writing,⁵⁷ as does (a) adding § 3.1 to the Unexecuted Settlement Agreement; (b) reporting no binding agreement in the August 14 Form 10-Q; (c) stating in the August 14 Form 10-Q that negotiations remain ongoing; (c) indication

⁵⁴ See In re DPH Holdings Corp., 553 B.R. 20, 27 (Bankr. S.D.N.Y. 2016) (“[A] court is not free to alter the [unambiguous] contract to reflect its personal notions of fairness and equity”).

⁵⁵ See Chesapeake Energy Corp., et al. v. Bank of N.Y. Mellon Trust, 773 F.3d 110, 114 (2d Cir. 2014) (“[T]he intent of the parties must be found within the four corners of [an unambiguous] contract.”); In re AMR Corp., 730 F.3d 88, 98 (2d Cir. 2013) (“Evidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing.”); Springwell Corp. v. Falcon Drilling Co., Inc., 16 F. Supp. 2d 300, 309 (S.D.N.Y. 1998) (“[Oral] testimony cannot be used to create an agreement not found in writings.”); Davidson, 1986 WL 2201, at *3 (“Subjective intent, including that of parties’ counsel, is simply immaterial.”); Henry L. Fox. Co. v. William Kaufman, Org., Ltd., 74 N.Y.2d 136, 142 (1989) (“[Writing] establishing a contractual relationship between the parties, [must] bear the signature of the party to be charged Parol evidence is admissible only to connect the papers, not to establish missing terms of the agreement.”).

⁵⁶ See Winston, 777 F.2d at 81 (use of “proposed settlement” and “proposed agreement” indicated agreements were “drafts or proposals” and not binding); Davidson, 1986 WL 2201, at *5 (same).

⁵⁷ See Sprint Commc’ns Co. v. Jasco Trading, Inc., 5 F. Supp. 3d 323, 333-34 (S.D.N.Y. 2014) (no binding agreement: even if reservation of “right not to be bound” was “a mere formality ... it was a reservation nonetheless”); Lamoille S. Supervisory Union v. Metro. Life Ins. Co., 2010 WL 5050560, at *3 (D. Vt. Nov. 24, 2010) (no binding agreement when counsels’ email correspondence “indicates the parties were negotiating the final details of this written agreement and that the agreement would not be final absent client approval”).

that if a binding settlement had been reached, it would have to have been required to disclose that in the Form 10-Q; and (d) statements to counsel to New GM at the August 15 meeting that the Unexecuted Settlement Agreement had not been signed, and therefore no binding contract existed.

78. The actions of counsel to plaintiffs and the unitholders confirm their respective understandings of the GUC Trust's position that it did not consider itself bound to the agreement until it was signed by all parties thereto, including (a) accepting the addition of § 3.1 to the Unexecuted Settlement Agreement along with other provisions reflecting an intent to be bound only by a signed agreement e.g., §§ 2.2, 2.9(a), 3.1, 3.2(B), 3.9, 3.11, 3.12, 3.16; (b) attempting to gather signatures; (c) acknowledging the agreement would be signed before being filed with the Bankruptcy Court; and (d) raising no objection to the GUC Trust's characterization of the agreement in its draft August 16 letter to the Court as nonbinding and (e) plaintiffs' counsel statement that their draft letter to the Court "says a lot of the same."

C. Factor 2: Parties Did Not Reach Agreement On Material Terms

79. Plaintiffs' counsel could not have agreed to any material terms—and the alleged agreement is not binding—because plaintiffs' counsel did not have the authority from their purported clients to enter into a binding agreement with the GUC Trust.

80. New York law governs whether plaintiffs' counsel have authority to bind their respective (purported) clients.⁵⁸

⁵⁸ See Johnson v. Nextel Commc'ns, Inc., 780 F.3d 128, 141 (2d Cir. 2015) ("Where plaintiffs' claim rests on state law, we apply the choice-of-law rules of the state in which the federal district court sits."); In re Gaston & Snow, 243 F.3d 599, 601 (2d Cir. 2001) (in federal-question cases, choice of law rules of forum state applies); Zurich Ins. Co. v. Shearson Lehman Hutton, Inc., 84 N.Y.2d 309, 317 (1994) (New York courts examine place of contracting, place of negotiation, place of performance, location of subject matter, and domicile or place of business of contracting parties).

81. Plaintiffs had to expressly provide authority to their counsel in order to enter into the Unexecuted Settlement Agreement.⁵⁹

82. Plaintiffs' counsel had no authority under § 3.17 or applicable law to agree to any material terms or otherwise enter into a binding agreement with the GUC Trust.

83. In deciding to not sign the draft agreement until after the August 17 conference, the GUC Trust exercised the right for which it purposely negotiated in § 3.1 to not be bound without all parties affixing their signatures.⁶⁰

D. Factor 3: Consistent With New York Law, Unexecuted Settlement Agreement Is Type That Must Be Reduced To Signed Writing

84. New York law requires that settlement agreements must be reduced to signed writings.⁶¹

85. Given the complexity of the Unexecuted Settlement Agreement, including (a) the contemplated disposition of claims (the vast majority of which were not filed with the Bankruptcy Court) that plaintiffs' counsel assert exceed \$10 billion, (b) \$21 million in contemplated payments, and (c) intended notice to over 10 million individuals, and (d) purported

⁵⁹ See Blakney v. Leathers, 867 N.Y.S.2d 145, 146 (2d Dep't 2008) ("An attorney must be specifically authorized to settle and compromise a claim, as an attorney has no implied power by virtue of his general retainer to compromise and settle his client's claim."); Martin v. Harrington, 47 Misc. 3d 1211(A), at *1 (N.Y. Sup. Ct. 2015) (same).

⁶⁰ See Ciaramella, 131 F.3d at 325 ("By not signing, [Ciaramella] demonstrated that he withheld such consent."); Winston, 777 F.2d at 80-83 ("[I]f either party communicates an intent not to be bound until he achieves a fully executed document, no amount of negotiation or oral agreement to specific terms will result in the formation of a binding contract"); R.G. Group, 751 F.2d at 74 (same); Stetson v. Duncan, 707 F. Supp. 657, 665 (S.D.N.Y. 1988) (parties nor counsel "ever thought their agreement would be 'final' prior to their clients' signatures on it").

⁶¹ See N.Y.C.P.L.R. § 2104 ("[A]n agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered."); Bonnette v. Long Island Coll. Hosp., 3 N.Y.3d 281, 286 (2004) (§ 2104 "on its face" permits no exceptions); Defeo v. Civitano, 756 N.Y.S.2d 879 (2d Dep't 2003) (unsigned release not effective)).

releases with respect to \$32 billion already distributed by the GUC Trust, it is the type of agreement that must be reduced to a signed writing.⁶²

86. Under New York law, an agreement is “executed” when it either is signed by all parties or fully performed by all parties.⁶³

87. Because the relevant email correspondence referenced in the Enforcement Motion and the unitholders’ joinder thereto does not contain purposely-inserted signatures, the “subscribed to” requirement imposed under New York law is not satisfied; a “pre-printed” or automatically generated email signature is insufficient.⁶⁴

88. The Unexecuted Settlement Agreement was neither fully nor partially performed.

E. Factor 4: Parties Did Not Partially Perform Alleged Agreement

89. Preparing the Unexecuted Settlement Agreement and accompanying settlement documents does not constitute partial performance of an agreement for purposes of the fourth Winston factor.⁶⁵

⁶² See Ciaramella, 131 F.3d at 326 (agreement’s complexity confirms parties would not bind themselves orally); Winston, 777 F.2d at 83 (settlement agreements should be in writing; four-page agreement was “complex enough,” and “the \$62,500 at issue is not a trifling amount”); R.G. Group, 751 F.2d at 77 (With \$80 million “at stake[,] a requirement that the agreement be in writing and signed simply cannot be a surprise to anyone”).

⁶³ See Black’s Law Dictionary 650 (9th ed. 2009) (defining “executed” as: “1. (Of a document) that has been signed <an executed will>. 2. That has been done, given, or performed <executed consideration>.”); 10 Ellicott Square Court Corp. v. Mountain Valley Indem. Co., 634 F.3d 112, 119–21 (2d Cir. 2011) (following Black’s definition; noting that “[a] contract is frequently said to be executed when the document has been signed, or has been signed, sealed, and delivered” (emphasis added)); Burlington Insurance Co. v. Utica First Insurance Co., 896 N.Y.S.2d 433, 435 (2d Dep’t 2010) (“[T]he purchase order was not signed at the time of the underlying plaintiff’s alleged injury and, therefore, had not been ‘executed’ as of that time”).

⁶⁴ See Bayerische Landesbank v. 45 John St. LLC, 960 N.Y.S.2d 64, 65–66 (1st Dep’t 2013) (subscribed by requirement not satisfied by emails “which contained a pre-printed signature”); see also Parma Tile Mosaic & Marble Co. v. Estate of Short, 87 N.Y.2d 524, 526 (1996) (§ 2104’s “subscribed by” requirement not satisfied by “automatic imprinting, by a fax machine, of the sender’s name at the top of each page transmitted”); Forcelli v. Gelco Corp., 972 N.Y.S.2d 570, 575-76 (2d Dep’t 2013) (email author purposely signed its name, which constituted subscription to a settlement; message “contained [attorney’s] printed name at the end ... as opposed to an ‘electronic signature’” which manifested “an intent that the name be treated as a signature”).

⁶⁵ See Grgurev v. Licul, 2016 WL 6652741, at *5 (S.D.N.Y. Nov. 10, 2016) (partial performance requires “some actual performance of the contract”); Smith, 2015 WL 866893, at *6 (“[P]reparing a written stipulation of settlement and/or mailing it ... [do not] constitute[] partial performance”); Delgrosso v. City of New York, 2013 WL

90. Statements made with respect to the settlement during the August 11 status conference before the MDL 2543 Court and the August 17 status conference before the Bankruptcy Court regarding the purported settlement do not constitute partial performance because (a) the material terms of the settlement and the GUC Trust's acceptance of those terms were not stated on the record and (b) the GUC Trust terminated its pursuit of the Unexecuted Settlement Agreement prior to the August 17 status conference.⁶⁶

5202581, at *8 (E.D.N.Y. Sept. 13, 2013) (“[D]rafting of the settlement documents” not partial performance because “it does not constitute a change in position, and substantive rights of the parties have been affected”); Conway v. Brooklyn Union Gas Co., 236 F. Supp. 2d 241, 250 (E.D.N.Y. 2002) (where “no money exchanged hands” but active litigation ceased in four related cases in anticipation of a settlement, this factor did “not tip the balance in either direction”).

⁶⁶ See Winston, 777 F.2d at 79–82 (finding “no evidence of partial performance” when a status conference had been canceled and a 30-day order had been requested and issued); R.G. Group, 751 F.2d at 75 (performance must be “accepted by the party disclaiming the contract”); Balaban-Krauss, 2014 WL 2927289, at *3 (“[T]he exchange of various proposals regarding the language in the settlement agreement and release was not performance of an existing contract, but rather was part of the negotiations concerning a written agreement which was by the terms binding only when executed by the parties.”); Edwards v. City of New York, 2009 WL 2865823, at *5 n.3 (“Even less persuasive is the defendants’ contention that they somehow accomplished partial performance by alerting me to the purported settlement”); Sprint, 5 F. Supp. at 333-34 (counsel informing court that “parties expected the signing of the Settlement Agreement” was not binding when “the terms of the agreement were not discussed or agreed on the record”); Langreigh v. Grenbaum, 775 F. Supp. 2d 630, 636 (S.D.N.Y. 2011) (“[I]f one of the parties sought to repudiate the agreement before partial performance, the fact that the other side persisted in performing would have little weight.”).

Dated: New York, New York
December 5, 2017

Respectfully submitted,

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EXHIBIT C-2

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Hearing Date: December 18, 2017

Counsel to General Motors LLC

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

In re:

MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al.,

Debtors.

Chapter 11
Case No. 09-50026 (MG)
(Jointly Administered)

**CONTENTIONS OF FACT AND LAW WITH RESPECT TO MOTION OF GENERAL
MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105(a) AND 1109(b), AND FED. R. BANKR.
P. 2018 AND 3020, AND PRE-TRIAL ORDER, TO APPEAR AND BE HEARD WITH
RESPECT TO PHASE 1 OF COURT'S CONSIDERATION OF PLAINTIFFS' MOTION
TO ENFORCE UNEXECUTED AND UNDATED SETTLEMENT AGREEMENT**

I. CONTENTIONS OF FACT¹

1. On June 1, 2009, the Debtors filed for bankruptcy protection under chapter 11 of the Bankruptcy Code.
2. Old GM entered into an agreement to sell substantially all of its assets, i.e., the Sale Agreement, to an entity that became New GM in exchange for, inter alia, New GM common stock and warrants.²
3. The Sale Agreement has a feature requiring New GM to provide additional shares of New GM common stock, i.e., the Adjustment Shares, if allowed general unsecured claims exceed a threshold amount.
4. The Sale Agreement also explicitly states that New GM is a “party in interest” for purposes of that Agreement. The Adjustment Shares provision is part of the Sale Agreement.³
5. If an order of the Bankruptcy Court estimates the “aggregate allowed general unsecured claims” against the Old GM bankruptcy estate in excess of \$35 billion, section 3.2(c)

¹ Capitalized terms not defined herein have the meanings ascribed to them in New GM’s Motion, Pursuant To 11 U.S.C. §§ 105(a) And 1109(b), Fed. R. Bankr. P. 2018 And 3020, And Pre-Trial Order, To Appear And Be Heard With Respect To Phase 1 Of Court’s Consideration Of Plaintiffs’ Enforcement Motion [ECF No. 14149] and the Joinder Of General Motors LLC In Motors Liquidation Company GUC Trust’s Objection To Plaintiffs’ Mot. To Enforce Unexecuted Settlement Agreement [ECF No. 14172] (the “**Joinder**”). Citations to the “**Decl.**” refer to the Declaration of James C. Tecce filed concurrently with the Joinder [ECF No. 14173].

² See Dkt. No. 2968-2 (Second Amendment 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, as amended as of July 5, 2009). See also In re Motors Liquidation Co., 529 B.R. 510, 535 (Bankr. S.D.N.Y. 2015), aff’d in part, rev’d in part, vacated in part sub nom, Elliot v. General Motors LLC (In re Motors Liquidation Co.), 829 F.3d 135 (2d Cir. 2016).

³ See Dkt. No. 2968-2 (Sale Agreement, at 98-99 (§ 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 successor and assigns 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 ... any legal or equitable claims, benefits, rights or remedies of any nature whatsoever under or by reason of this agreement”))).

of the Sale Agreement provides for New GM to issue Adjustment Shares in accordance with the formula set forth in the Sale Agreement.⁴

6. Section 3.2(c) of the Sale Agreement does not apply unless and until allowed unsecured claims equal or exceed \$35 billion.

7. To date, allowed unsecured claims do not equal or exceed \$35 billion.

8. As of June 30, 2017, the total amount of allowed general unsecured claims against the Debtors' estates was \$31,855,381,054, approximately \$3.15 billion below the Adjustment Shares threshold, and \$10.15 billion below the amount necessary to trigger the issuance of the maximum amount of Adjustment Shares allowed under the Sale Agreement.⁵

9. Between June and August 2017, the GUC Trust had discussions with counsel claiming to represent certain Ignition Switch Plaintiffs,⁶ certain Non-Ignition Switch Plaintiffs,⁷

⁴ See Dkt. No. 2968-2 (Sale Agreement, at 124 (§3.2(c)) (“Sellers may, at any time, seek an Order of the Bankruptcy Court (the ‘Claims Estimate Order’) . . . 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.”)).

⁵ See Dkt. No. 13994 (Motors Liquidation Company GUC Trust Quarterly Section 6.2(c) Report And Budget Variance Report as of June 30, 2017, dated July 21, 2017, at 4).

⁶ According to counsel for plaintiffs, the term “**Ignition Switch Plaintiffs**” refers to those plaintiffs asserting economic loss claims or alleging economic losses who, as of July 10, 2009, owned or leased a vehicle with an ignition switch defect included in Recall No. 14V-047. See Decl. Ex. A (Unexecuted Settlement Agreement, at 3 (Preamble § S.a.)). Plaintiffs’ counsel do not represent nearly all of those persons, have never been retained by them, and have no authority to speak or act for them.

⁷ According to counsel for plaintiffs, the term “**Non-Ignition Switch Plaintiffs**” refers to those plaintiffs asserting economic loss claims or alleging economic losses who, as of July 10, 2009, owned or leased a vehicle with defects in ignition switches, side airbags, or power steering included in Recall Nos. 14V-355, 14V-394, 14V-400, 14V-346 and 14V-540, 14V-119 and 14V-153. See Decl. Ex. A (Unexecuted Settlement Agreement, at 3 (Preamble § S.b.)). Plaintiffs’ counsel do not represent nearly all of those persons, have never been retained by them, and have no authority to speak or act for them.

and certain PIWD Plaintiffs⁸ regarding a potential settlement of the Late-Claims Motions and the underlying claims against the GUC Trust. These discussions resulted in the drafting of the Unexecuted Settlement Agreement.

10. Under the Unexecuted Settlement Agreement, the GUC Trust would have been obligated to support a purported Claims Estimate Order that quantifies the Allowed General Unsecured Claims in excess of \$42 billion and directs New GM to deliver 30 million shares of stock.⁹

11. New GM is the party to whom plaintiffs and the unitholders are looking to fund their alleged settlement.

12. New GM has a direct economic interest in whether the Unexecuted Settlement Agreement is determined to be binding on the GUC Trust.

13. If found to be binding, the Unexecuted Settlement Agreement would impose significant obligations on New GM.

- (a) The Unexecuted Settlement Agreement contains “Key Objectives,” including the pursuit of a purported “Claims Estimate Order” that (i) finds Allowed General Unsecured Claims in excess of \$42 billion (even though the individuals before the bankruptcy court only include two persons seeking economic losses and a few hundred personal injury claimants) and (ii) directs New GM to deliver 30 million shares of stock under the Adjustment Shares provision contained in the Sale Agreement.¹⁰

⁸ According to counsel for plaintiffs, the term “**PIWD Plaintiffs**” means “those certain Ignition Switch Pre-Closing Accident Plaintiffs represented by PIWD Counsel,” and “**PIWD Counsel**” means “(i) Robert C. Hilliard of Hilliard Munoz Gonzalez, LLP and Thomas J. Henry of the Law Offices of Thomas J. Henry, but solely for the Pre-Closing Accident Plaintiffs represented by the two law firms; and (ii) Lisa M. Norman of Andrew Myers, P.C., but solely for the Pre-Closing Accident Plaintiffs represented by that law firm.” Decl. Ex. A (Unexecuted Settlement Agreement, at 8 (§§ 1.43, 1.44)).

⁹ If this contested matter proceeds past Phase 1 (and New GM believes it should not), New GM reserves any and all rights to argue in Phase 2 that the Unexecuted Settlement Agreement does not trigger any of New GM’s obligations under the Sale Agreement or the Adjustment Shares Provision (§ 3.2), and nothing herein should be considered an admission or waiver with respect to any such defense.

¹⁰ See Decl. Ex. A (Unexecuted Settlement Agreement, at 7 (¶ 1.29 (“Key Objectives” definition))); *id.* at 5 (¶ LL (“The GUC Trust acknowledges the key objectives of the Signatory Plaintiffs in entering into this Agreement are to (i) achieve the funding of the Settlement Fund ... and (iii) take or to cause to be taken all

- (b) Entry of the purported “Claims Estimate Order” annexed to the Unexecuted Settlement Agreement would affirmatively impose the obligations outlined in the Key Objectives on New GM.¹¹
- (c) The Unexecuted Settlement Agreement would require New GM to provide to plaintiffs, at its own expense, the names and addresses of millions of individuals to facilitate service of the settlement motion.¹²
- (d) The proposed Claims Estimate Order provides that New GM’s contribution of the Adjustment Shares will be without prejudice to any rights that any plaintiffs had against New GM, including successor liability claims against New GM in the Ignition Switch MDL.¹³

steps necessary to require New GM to issue the maximum amount of Adjustment Shares and to make the value of the Settlement Fund and the Adjustment Shares available to satisfy, in part, the Plaintiffs’ claims ... [T]he GUC Trust, based upon its review of the expert report and proffer of evidence provided by Counsel for the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs and the expert report and proffer of evidence provided by certain Pre-Closing Accident Plaintiffs, agrees to provide the cooperation and assistance provided for herein relating to the issuance of a Claims Estimate Order ... and to seek to estimate for allowance purposes, and not dispute the amount of estimated claims thereunder.”)).

¹¹ See Decl. Ex. A (Unexecuted Settlement Agreement, at 1 (¶ D (“Pursuant to the AMSPA, if the Bankruptcy Court issues an order estimating the aggregate Allowed General Unsecured Claims against the Sellers (the ‘Claims Estimate Order’) at an amount exceeding ... \$35,000,000,000 ... then New GM must ... issue the Adjustment Shares.”)); *id.* at 4 (¶¶ FF (GUC Trust counsel has been furnished with “expert reports and proffers of evidence indicating the amount of damages for the Ignition Switch Plaintiffs’, certain Non-Ignition Switch Plaintiffs’, and certain Pre-Closing Accident Plaintiffs’ asserted claims, if ultimately determined to be Allowed General Unsecured Claims against Old GM and/or the GUC Trust, would be greater than the amount necessary to trigger New GM’s obligations to issue the Adjustment Shares in the maximum amount under the AMSPA”)); *id.* at 11 (¶ 2.4 (“[T]he GUC Trust, based on its review of the expert report and proffer of evidence provided ... agrees that it shall support the entry of a Claims Estimate Order....”)); see also Dkt. No. 14093-10 (Enforcement Mot., Ex. J (proposed Claims Estimate Order) ¶¶ 4-6 (confirming Allowed General Unsecured Claims exceed \$42 billion, directing New GM to issue \$30,000,000 Adjustment Shares—while preserving claims against New GM, and stating that “[w]ithin five (5) business days of entry of this Order, New GM shall issue 30 million shares of New GM common stock (the Adjustment Shares) or the value of the Adjustment Shares, to an account designated by the Signatory Plaintiffs”)).

¹² See Dkt. No. 14093-16 (Enforcement Mot., Ex. P (Mot. for Order Approving Notice Procedures with Respect to Proposed Settlement By and Among the Signatory Plaintiffs and the GUC Trust), at Ex. A (Proposed Order Approving Notice Procedures With Respect to Proposed Settlement By and Among the Signatory Plaintiffs and the GUC Trust), at 2 (“ORDERED that, no later than two (2) days after the entry of this Order, New GM shall turn over to the Parties the names and addresses of (A) all persons in the United States who, as of July 10, 2009, owned or leased a defective vehicle manufactured by Old GM included in the Recalls; and (B) all Pre-Closing Accident Plaintiffs who have filed a lawsuit against New GM as of the date of this Order.”)).

¹³ See Dkt. No. 14093-10 (Enforcement Mot., Ex. J (proposed Claims Estimate Order) ¶ 6)).

14. A decision in Phase 1 has a direct effect on New GM's rights under the Forbearance Agreement it entered into with the GUC Trust. On September 12, 2017, the GUC Trust administrator and New GM executed the Forbearance Agreement, and the GUC Trust filed a motion seeking its approval by the Court, in which New GM joined.¹⁴ Under the terms of the Forbearance Agreement between New GM and the GUC Trust, if the Court finds the Unexecuted Settlement Agreement is binding, then the Forbearance Agreement terminates automatically.

15. The result of Phase 1 determines whether there will be a Phase 2. A second litigation phase would include the expenditure of substantial New GM resources to contest, among other things, the propriety of a Claims Estimate Order and approval of an agreement without entry of Fed. R. Civ. P. 23 protections.

16. New GM has at least as much of a financial stake as the unitholders in the outcome of Phase 1 and Phase 2. New GM is seeking to protect itself from an improper attempt to compel the issuance of 30 million shares of New GM stock.

17. Moreover, Plaintiffs' counsel has admitted New GM's significant interest in matters relating to the Unexecuted Settlement Agreement, including their previewing the Unexecuted Settlement Agreement with New GM before the August 17, 2017 status conference and their notice to New GM to attend that conference.

18. During a hearing on July 16, 2015, the Bankruptcy Court observed, when discussing the potential impact of a settlement between the GUC Trust and plaintiffs that could trigger the Adjustment Shares, that while "[t]he principal attention that a judge gives to [a 9019

¹⁴ See Dkt. No. 14095 (Mot. of the Motors Liquidation Co. GUC Trust Administrator Pursuant to Bankruptcy Code Sections 105(a), 363(b), and 1142(b) and Bankruptcy Rule 3020(d) to Authorize Entry into Forbearance Agreement with General Motors LLC ("**Forbearance Agreement**")); Dkt. No. 14096 (Joinder of General Motors LLC in Mot. of Motors Liquidation Co. GUC Trust Administrator Pursuant to Bankruptcy Code Sections 105(a), 363(b), and 1142(b) and Bankruptcy Rule 3020(d) to Authorize Entry into Forbearance Agreement).

motion] is whether the estate is giving away the store[,] ... we also look to see whether parties while acting in the interest of the estate are nevertheless inappropriately adversely affecting parties who aren't at the table[. T]hat's the more significant concern here.”¹⁵

19. At that hearing, plaintiffs' counsel conceded New GM “has an economic interest in not having the accordion [Adjustment Shares] trigger[ed].”¹⁶

20. Overall, in this long-running bankruptcy case, New GM has been granted standing to brief and appear and be heard, inter alia, (a) on issues in connection with the Late-Claims Motions,¹⁷ and (b) in the contested matter that involved the GUC Trust, Green Hunt Wedlake, Inc., as trustee for General Motors Nova Scotia Finance Company, and the current and former noteholders of General Motors Nova Scotia Finance Company.

21. Finally, New GM has participated in the discovery relating to Phase 1 and coordinated its litigation efforts with the GUC Trust.

II. CONTENTIONS OF LAW

22. New GM is a party in interest with standing to appear and be heard in Phase 1 under section 1109(b) of the Bankruptcy Code and Bankruptcy Rule 2018(a).

¹⁵ See Dkt. No. 13399 (Jul. 16, 2015 Hr. Tr. 42:7-19).

¹⁶ Id. at 43:6-7; see also id. at 42:24-43:6 (“I think the only party that could stand up and say they're being adversely affected aside from plaintiffs ... would be New GM. It's New GM's stock that would have to be forked over”). Indeed, at this hearing, Plaintiffs' counsel expressed his “presum[ption]” that New GM would have “***all the time and due process it needs and wants in order to ensure that its rights are protected*** before it literally has to turn over 10 million shares of New GM stock.” Id. at 43:11-15 (emphasis added).

¹⁷ See Dkt. No. 13869 (Order Establishing, Inter Alia, Briefing Schedule for Certain Issues Arising from Late Claim Mots. Filed by Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs, And Certain Ignition Switch Pre-Closing Accident Plaintiffs).

23. Pursuant to 11 U.S.C. § 1109(b), “[a] ‘party in interest,’ including the debtor, the trustee, a creditor’s committee, an equity security holders’ committee, a creditor,¹⁸ an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.”

24. Pursuant to Fed. R. Bankr. P. 2018(a), “[i]n a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.”

25. The parties specifically enumerated in section 1109(b) are non-exclusive, and section 1109(b) does not require that parties be third-party beneficiaries of a contract to have standing to appear and be heard in a dispute concerning whether the contract is binding on the parties.¹⁹

26. The Bankruptcy Code does not define “party in interest,” the term is interpreted broadly to allow parties affected by the chapter 11 case to be heard.²⁰

27. In applying section 1109(b), “courts must determine on a case by case basis whether the prospective party in interest has a sufficient stake in the proceeding so as to require representation.” In re Texaco Inc., 81 B.R. 820, 828 (Bankr. S.D.N.Y. 1988) (citing In re Amatex Corp., 755 F.2d 1034, 1042 (3d. Cir. 1985)).

¹⁸ New GM filed a proof of claim in the bankruptcy cases, see Proof of Claim No. 71111, and the GUC Trust has ongoing obligations to New GM under the Sale Agreement.

¹⁹ See In re Residential Capital, LLC, 2013 WL 6698365, at *3 (Bankr. S.D.N.Y. Dec. 19, 2013) (“In the context of chapter 11 cases, the Code provides a non-exclusive list of ‘parties in interest’”); In re Global Indus. Techs., Inc., 645 F.3d 201, 210 (3d Cir. 2011) (same).

²⁰ In re Residential Capital, LLC, 2013 WL 6698365, at *3; see also In re Global Indus. Techs., Inc., 645 F.3d at 210 (“The list of potential parties in § 1109(b) is not exclusive. The section has been construed to create a **broad right of participation** in Chapter 11 cases.” (emphasis added)); In re Stone Barn Manhattan LLC, 405 B.R. 68, 74 (Bankr. S.D.N.Y. 2009) (“Although the term ‘party in interest’ is not defined by the Bankruptcy Code or Rules, courts construe its meaning broadly to insure fair representation of all constituencies impacted in any significant way by a Chapter 11 case.”).

28. New GM has standing to appear and be heard in connection with Phase 1 because, among other things, the Unexecuted Settlement Agreement imposes significant obligations on New GM, New GM is the primary target of the Unexecuted Settlement Agreement, and New GM is the party to whom plaintiffs and the unitholders are looking to fund the alleged settlement.²¹

29. Proposed targets of an agreement—like New GM here—have standing to challenge any and all aspects of that agreement, regardless of whether they are parties to it.²²

30. The Parties’ decision to bifurcate the issues into two phases does not impact the standing analysis. Party-in-interest standing is interpreted broadly to allow the participation of parties who are affected by the litigation; it does not restrict standing to those whose rights will be finally and ultimately resolved.²³

²¹ See, e.g., In re Glob. Indus. Techs., Inc., 645 F.3d at 212 (liability insurers had standing under § 1109(b) to contest plan that increased insurers’ pre-petition liability exposure by more than 27 times: “when a federal court gives its approval to a plan that allows a party to put its hands into other people’s pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed. In short, they at least have bankruptcy standing.”); In re Residential Capital, LLC, 2015 WL 629416, at *3 (S.D.N.Y. 2015) (“[C]ourts in this Circuit have held that a party in interest is one that has a sufficient interest in the outcome of the case that would require representation, or a pecuniary interest that will be directly affected by the case.”); In re Stone Barn Manhattan LLC, 405 B.R. at 74 (noting law is well-settled “that a pecuniary interest directly affected by the bankruptcy proceeding provides standing under § 1109(b)”); In re Texaco Inc., 81 B.R. at 828 (party in interest includes any entity with “sufficient stake in the outcome of the proceeding so as to require representation”).

²² See In re Heating Oil Partners, LP, 422 F. App’x 15, 16-17 (2d Cir. 2011) (“AHA’s pecuniary interest here is the default judgment ... for which it will indemnify [debtor] in full or in part.... Without a doubt, AHA, which has a personal stake in whether the default judgment is void, is a party in interest pursuant to section 1109(b).”). See also In re Stone Barn Manhattan LLC, 405 B.R. at 74 (debtors in separate chapter 11 case had standing to object to settlement given their interest in escrow account from which settlement was proposed to be funded); In re Sapphire Development, LLC, 523 B.R. 1, 5-6 (D. Conn. 2014) (judgment creditor of trustee of sole owner of debtor was a “party in interest” under section 1109(b) when “[a]n outcome of the bankruptcy proceeding that distributed any part of the property or proceeds therefrom to [debtor’s] other creditors would ... harm his interest[,]” and that interest is not “purely derivative of another party’s rights”); In re Standard Insulations, Inc., 138 B.R. 947, 950 (Bankr. W.D.Mo. 1992) (insurers exposed to claims against debtor were “parties in interest” under section 1109(b) where “[d]ebtor’s insurance [was] the only asset of consequence” and “[t]he insurers [were] responsible for payment of injury claims caused by exposure to debtor’s products during covered periods”).

²³ See, e.g., In re Residential Capital, LLC, 2013 WL 6698365, at *3 (“‘Party in interest’ is interpreted broadly to allow parties *affected* by the chapter 11 case to be heard.” (emphasis added)); In re Global

31. The presence of subsequent defenses in Phase 2 does not preclude a finding of standing in Phase 1.²⁴ New GM's substantive legal rights and legal expenses could be impacted by the adjudication of Phase 1 issues because: (a) the Forbearance Agreement will terminate automatically if the Court finds the Unexecuted Settlement Agreement is binding on the GUC Trust and (b) potential Phase 2 litigation would result in substantial New GM legal expenses to contest the legal propriety of the alleged settlement.

32. Granting New GM standing to participate in Phase 1 comports with the principles underlying section 1109(b) and generally furthers the purposes of the Bankruptcy Code.²⁵

33. New GM's right to participate in Phase 1 is also consistent with Bankruptcy Rule 2018(a). New GM easily satisfies each of the factors relevant to whether it can participate pursuant to Bankruptcy Rule 2018(a), *i.e.*, "1) whether the moving party has an economic or similar interest in the matter; 2) whether the interests of the moving party are adequately

Indus. Techs., Inc., 645 F.3d at 210 (Section 1109(b) "has been construed to create a broad right of participation in Chapter 11 cases."); In re Stone Barn Manhattan LLC, 405 B.R. at 74 ("Although the term 'party in interest' is not defined by the Bankruptcy Code or Rules, courts construe its meaning broadly to insure fair representation of all constituencies **impacted in any significant way** by a Chapter 11 case." (emphasis added)); In re Telligent, Inc., 417 B.R. 197, 210 (Bankr. S.D.N.Y. 2009) (noting section 1109(b) standing entitles entities with interests in dispute "**to assert that interest with respect to any issue to which it pertains**" (emphasis added)).

²⁴ See, e.g., In re Global Indus. Techs., Inc. 645 F.3d at 213-14 (plan's creation of trust "led to a manifold increase in ... claims," which "constitutes a tangible disadvantage to [the insurers who], **despite having their coverage defenses available**, will be faced with coverage obligations to the [trust] in a world that recognizes the existence of over 4,600 ... claims, as opposed to a pre-Plan world that recognized only 169" (emphasis added)); In re Suffolk Regional Off-Track Betting Corp., 462 B.R. 397, 413 (Bankr. E.D.N.Y. 2011) ("If Churchill Downs has standing to be heard on the issue of assumption or rejection of the Amended Term Sheet in this bankruptcy case, it has standing to be heard on the threshold issue of Suffolk OTB's entitlement to commence this bankruptcy case.").

²⁵ See In re Heating Oil Partners, LP, 422 F. App'x at 17 ("When interpreting the meaning of [party in interest under section 1109(b)], 'we are governed by the Code's purposes.'" (quoting In re Comcoach Corp., 698 F.2d 571, 573 (2d Cir. 1983)); 7 Collier on Bankruptcy ¶ 1109.02[3][b] (§ 1109(b) "guarantees that every person with a direct stake in the proceedings has an opportunity to be heard with respect to any issue in the case that is pertinent to his or her interests"); 7 Collier on Bankruptcy ¶ 1109.04[2][b] ("A fundamental purpose of section 1109(b) is to grant any party with a financial stake in the case the right ... to participate with respect to the judicial determination of any issue bearing on the ultimate disposition of his or her interest.").

represented by the existing parties; 3) whether the intervention will cause undue delay to the proceedings; and 4) whether the denial of the movant's request will adversely affect their interest."²⁶

34. Among other things, New GM's interests are not adequately represented by other parties; the GUC Trust has significantly different (and less onerous) obligations under the Unexecuted Settlement Agreement than New GM, and New GM's participation will not cause delay because New GM will not duplicate the GUC Trust's efforts.²⁷

35. The Supreme Court has identified three aspects of Article III standing: (1) an injury in fact, which is an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) a causal connection

²⁶ In re First Interregional Equity Corp., 218 B.R. 731, 736 (Bankr. D.N.J. 1997).

²⁷ See e.g., Fed. R. Bankr. P. 2018(a) (authorizing Court to "permit any interested entity to intervene generally or with respect to any specified matter"); In re Caldor Corp., 303 F.3d 161, 172 n.9 (2d Cir. 2002) ("[Rule] 2018 governs permissive intervention in a case [and] is not inconsistent with a broad interpretation of § 1109(b) because [Rule] 2018 applies to entities that are not parties in interest and not entitled to intervene as of right under § 1109(b)"); 9 Collier On Bankruptcy ¶ 2018.04[3] (noting cause justifying Rule 2018(a) intervention includes "an economic or similar interest in the case or one of its aspects ... an entity's concern with precedential ramifications of an aspect of a case ... [or] no other entity exists to adequately protect [the movant's] position and that intervention would not result in undue delay or prejudice"); In re Narcisse, No. 96-21345 NHL, 2013 WL 1316706, at *3 (Bankr. E.D.N.Y. Mar. 29, 2013) (City of New York permitted to appear and be heard under Rule 2018(a) in connection with motion to reopen a chapter 7 case, which was initiated to allow the prosecution of a personal injury action, because "the City may become indebted to th[e] bankruptcy estate if there is a recovery in the Personal Injury Action."); In re Zhejiang Topoint Photovoltaic Co., Ltd., No. 14-24549 (GMB), 2015 WL 2260647, at *4-6 (Bankr. D.N.J. May 12, 2015) (granting creditor standing to appear under Rule 2018(a) because party with a direct interest in litigating dispute was "almost entirely owned and completely controlled by the Debtors" and, consequently, the creditor's interest "lack[ed] representation because the SPVs, which hold the direct rights against the Debtors, are sitting idly and will not enforce their own rights against the Debtors."); In re Alterra Healthcare Corp., 353 B.R. 66, 70-71 (Bankr. D. Del. 2006) (permitting Philadelphia Newspapers, LLC to appear under Bankruptcy Rule 2018(a) to oppose a Motion to File under Seal the Application to Approve Nine Settlements because the Newspaper asserted "an actual injury to itself" in that "the Seal Orders prevent[ed] it from obtaining access[,] and "[t]he Reorganized Debtor ha[d] not articulated sufficient prejudice to it to warrant denial of the motion to intervene."); In re Torrez, 132 B.R. 924, 936-37 (Bankr. E.D. Cal. 1991) (allowing creditor, Northwestern Mutual Life Insurance Company, to appear under Bankruptcy Rule 2018(a) in a motion to reconvert case back to chapter 11 because "Debtors reconverted their case to Chapter 11 expressly to place themselves in a position allowing them to make a concerted effort to set aside the foreclosure by Northwestern" and, therefore, "[t]he proposed action reference setting aside the foreclosure may dramatically effect Northwestern's position" and "no other entity exists to adequately protect Northwestern's position.").

between the injury and the conduct complained of; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. In re MF Global Holdings Ltd., 469 B.R. at 188 (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)).

36. New GM has standing under Article III of the U.S. Constitution for the same reasons New GM is a party in interest under section 1109(b).²⁸ Moreover, the injury New GM will face should the Bankruptcy Court find the Unexecuted Settlement Agreement binding is concrete and particularized.

37. New GM meets the prudential standing requirements of the third-party standing doctrine.

38. Prudential standing bars litigants “from asserting the constitutional and statutory rights of others in an effort to obtain relief for injury to themselves.” Kane v. Johns-Manville Corp., 843 F.2d 636, 643 (2d Cir. 1988) (holding creditor with existing asbestos claim lacked standing to assert the rights of future claimants).

39. There is a justiciable controversy. New GM is not enforcing a third-party’s rights with respect to the Unexecuted Settlement Agreement. The Unexecuted Settlement Agreement imposes significant obligations directly on New GM, and New GM is asserting its own rights to challenge any and all aspects of an agreement that imposes onerous obligations on it. Moreover, New GM is seeking to protect its rights under the Forbearance Agreement, which is dependent on the Court’s ruling in Phase 1.

²⁸ See In re Sapphire Development, LLC, 523 B.R. 1, 6 (D. Conn. 2014) (although “standing requirements of 11 U.S.C. § 1109 supplement rather than replace constitutional standing requirements[, ...] where parties ... have a clear financial stake in the outcome of a bankruptcy proceeding, they also meet the constitutional requirements of an injury in fact that can be fairly traced to the challenged conduct and is redressible by a favorable decision from the court”); In re Global Indus. Techs., Inc., 645 F.3d at 211 (“Persuasive authority indicates that Article III standing and standing under the Bankruptcy Code are effectively coextensive.”); 7 Collier on Bankruptcy ¶ 1109.04[4][a] (“In almost every instance, the outcome of any particular proceeding in a chapter 11 case will have a sufficient effect on the interests of stakeholders generally so that their participation in the proceeding will satisfy the standing aspect of the case or controversy requirement.”).

40. By inviting the Participating Unitholders to appear and be heard even though they are not signatories to the Unexecuted Settlement Agreement, Plaintiffs have conceded that having a financial stake in the outcome of this contested matter is sufficient for standing purposes.

41. The Phase 1 issues present a case and controversy which the Court should decide.

42. New GM will be prejudiced if it is unable to participate in the Phase 1 proceedings.

43. New GM's coordinated participation during discovery in Phase 1 provides a further justification to allow it to participate in the Phase 1 trial.

Dated: New York, New York
December 5, 2017

Respectfully submitted,

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EXHIBIT D

**UNITED STATE BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
IN RE: MOTORS LIQUIDATION COMPANY, et al. f/k/a GENERAL MOTORS CORP., et al
Case No. 09-50026-mg**

PLAINTIFFS AND UNITHOLDERS' EXHIBIT LIST

Exhibit No.	Description	Bates
PX-001	Settlement Agreement between GUC and Plaintiffs	BR005717-5740
PX-002	May 9, 2017 Email from Steel	BR001936-1937
PX-003	May 17, 2017 Hearing Transcript at 266-267	
PX-004	May 22, 2017 Email from Williams	BR002322
PX-005	June 6, 2017 Email from Steel	BR007564-7578
PX-006	June 9, 2017 Email from Moss	BR004584-4621 #7452.1
PX-007	June 11, 2017 Email from Steel	BR004622-4623
PX-008	June 15, 2017 Email from Steel	BR004675-4715 GUC_0010989 and attachments
PX-009	June 23, 2017 Email from Martorana	BR004761-4797 GUC_0010965 and attachments
PX-010	June 26, 2017 Email from Martorana	BR004718-4729
PX-011	July 3, 2017 Email from Steel	BR003749-88 GUC_0000333 and attachments

PX-012	July 5, 2017 Letter from Steinberg to Judge Glenn	BR004176-456
PX-013	July 6, 2017 Email from Martorana	BR004460-4501 GUC_0000022 and attachments
PX-014	July 10, 2017 Email from Weintraub	GUC_0006286
PX-015	July 11, 2017 Email from Hilliard	BR000359
PX-016	July 12, 2017 Email from Steel	BR002323-2328
PX-017	July 12, 2017 Email from Martorana	BR002330-2372 GUC_0004213 and attachments
PX-018	July 13, 2017 Email from Steel	BR002373-2572
PX-019	July 14, 2017 Email from Weintraub	BR002573-2617 GUC_0003965 and attachments
PX-020	July 17, 2017 Email from Martorana	BR002622-2667 GUC_0009750 and attachments
PX-021	July 18, 2017 Email from Weintraub	BR002669-2714 GUC_0003920 and attachments
PX-022	July 18, 2017 Email from Weintraub	BR002868-2878
PX-023	July 19, 2017 Letter from Steinberg to Gillett	GUC_0010413
PX-024	July 19, 2017 Email from Gillett to Davidson	GUC_0010434
PX-025	July 19, 2017 Email from Forster	BR002908-2968 GUC_0009453 and attachments
PX-026	July 20, 2017 Email from Martorana	BR002969-3015 GUC_0003802 and attachments

PX-027	July 20, 2017 Email from Martorana	GUC_0013905-10
PX-028	July 25, 2017 Email from Martorana	AG 0005746-779*
PX-029	July 25, 2017 Email from Steel	BR003073-3210
PX-030	July 26, 2017 Email from Steel	BR003211-3244 GUC_0009347 and attachments
PX-031	July 27, 2017 Email from Steel	BR003262-3267
PX-032	July 27, 2017 Email from Martorana	BR003277-3348 GUC_0003644 and attachments
PX-033	July 28, 2017 Email from Weintraub	GUC_0003217-23
PX-034	July 28, 2017 Email from Martorana	BR003354-3423 GUC_0003546 and attachments
PX-035	July 28, 2017 Email from Martorana	BR003436-3495
PX-036	July 31, 2017 Email from Weintraub	HM001573
PX-037	August 2, 2017 Email from Moss	BR006091
PX-038	August 2, 2017 Email from Martorana	BR006092-6137 GUC_0002981 & attachments
PX-039	August 3, 2017 Email from Steel	GUC_0002912 and attachments
PX-040	August 3, 2017 Email from Martorana	GP002042-2223 GUC_0002758

* Electronic communications produced by Akin Gump Strauss Hauer & Feld LLP, bates stamped with the prefix "AG," were standardized to UTC during conversion.

PX-041	August 3, 2017 Email from Martorana	BR006164-6344
PX-042	August 3, 2017 Email from Martorana	BR006162-6163
PX-043	August 7, 2017 Email from Moss	AG 0000032-33
PX-044	August 7, 2017 Email from Steel	BR006376-6612 GUC_0002514 & attachments
PX-045	August 8, 2017 Email from Steel	BR006635-6640
PX-046	August 8, 2017 Email from Martorana	BR006651-6902 GUC_0002259 & attachments
PX-047	August 9, 2017 Email from Golden	BR007012-7017
PX-048	August 9, 2017 Email from Golden	GP001540
PX-049	August 9, 2017 Email from Williams	BR006977-6978
PX-050	August 10, 2017 Email from Golden	BR007305-7316
PX-051	August 10, 2017 Email from Vanaskey	GUC 0013890-93
PX-052	August 10, 2017 Email from Steel	BR007488-7588
PX-053	August 11, 2017 Weisfelner Declaration Ex C - Experts of 8/11/17 Hearing Transcript	Weisfelner Declaration
PX-054	August 11, 2017 Email from Moss	AG 0005375-395
PX-055	August 11, 2017 Bloomberg Article	HBSS000928

PX-056	August 11, 2017 Email from Steel	BR005064-5293 GUC_0001589 & attachments; GUC_0001522 & attachment
PX-057	August 11, 2017 Email from Steel	GP000692-93
PX-058	August 11, 2017 Email from Fox	BR005329-5338
PX-059	August 11, 2017 Email from Gillett	GUC_13954
PX-060	August 12, 2017 Email from Vanaskey	GUC_13953
PX-061	August 12, 2017 Email from Weintraub	AG 0004355-4445
PX-062	August 12, 2017 Email from Norman	BR005373-5383
PX-063	August 12, 2017 Email from Martorana	BR005468-5484
PX-064	August 12, 2017 Email from Martorana	GP00535-554;
PX-065	Final Execution Version of Andrews Declaration	GP000059-66
PX-066	August 14, 2017 Email from Andrews	GUC 0013092
PX-067	August 14, 2017 Email from Moss	BR005770-5772
PX-068	August 11, 2017 MDL Hearing Transcript	GUC 0010509-566
PX-069	August 14, 2017 Email from Hartgen	GUC_0013248
PX-070	August 14, 2017 Email from Moss	AG 0004448-449

PX-071	August 14, 2017 Email from Golden	AG0000592
PX-072	August 14, 2017 Email from Martorana	GUC 0007042-051
PX-073	August 14, 2017 Email from Steel	BR005760-5769
PX-074	August 14, 2017 Email from Martorana	AG 0006709- 726
PX-075	August 14, 2017 Email from Steel	BR005804-6003 GUC_0006799 & attachments
PX-076	August 14, 2017 Email from Martorana	GUC 0013923
PX-077	August 14, 2017 Email from Martorana	BR006006-6009
PX-078	August 14, 2017 Email from Steel	BR006024-6026
PX-079	August 14, 2017 Email from Steel	GP000013-16
PX-080	August 14, 2017 Email from Steel	BR006024-6026
PX-081	August 14, 2017 Email from Hilliard	BR005593-5596
PX-082	August 14, 2017 Email from Hilliard	GP001298-1302
PX-083	August 14, 2017 Email from Gillett	GUC 0010402-403
PX-084	August 14, 2017 Email from Davidson	GUC 0010399-10401
PX-085	August 14, 2017 Email from Norman	BR005790-5793

PX-086	August 14, 2017 Email from Cabraser	GUC 0001066-069
PX-087	August 14, 2017 Email from Steel	GUC 0005647-650
PX-088	August 14, 2017 Email from Martorana	GUC_0013928
PX-089	August 14, 2017 Email from Steel	BR005545-5549
PX-090	August 14, 2017 Email from Steel	BR005601-5605
PX-091	August 14, 2017 Email from Steel	BR005550-5553
PX-092	August 14, 2017 Email from Steel	GP000617
PX-093	August 14, 2017 Email from Gillett	AG0006847-50
PX-094	August 14, 2017 Email from Steel	BR005613-5754
PX-095	Form 10-Q	GUC 010567-620
PX-096	August 14, 2017 Email from Gillett	GUC 0010416-418
PX-097	August 15, 2017 Email from Cordasco	GUC 0012695-98
PX-098	August 15, 2017 Email from Vanaskey	GUC 0013107-111
PX-099	August 15, 2017 Email from Vanaskey	GUC 0013097-101
PX-100	August 15, 2017 Email from Gillett	BR006032-6033

PX-101	August 15, 2017 Email from Steinberg	GUC 0010490
PX-102	August 15, 2017 Email from Gillett	GUC 10414-415
PX-103	August 15, 2017 Email from Gillett	GUC 0000913-919
PX-104	June 16, 2017 Email from Gillett	GUC_0013929
PX-105	August 15, 2017 Email from Moss	BR006034-6036
PX-106	August 16, 2017 Email from Williams	BR006081-6082
PX-107	August 16, 2017 Email from Williams	GUC 0000904
PX-108	August 16, 2017 Email from Williams	GUC 0010446
PX-109	August 16, 2017 Email from Andrews	GUC_0013942
PX-110	August 16, 2017 Email from Williams	GUC_0010445
PX-111	August 16, 2017 Email from Gillett	BR006071-6072
PX-112	August 16, 2017 Email from Howard	BR006083
PX-113	August 16, 2017 Email from Williams	GUC 0010443
PX-114	August 16, 2017 Email from Steinberg	GUC 0010485
PX-115	August 16, 2017 Email from Williams	GUC 0010442

PX-116	August 16, 2017 Email from Williams	AG 0006844-6846
PX-117	August 16, 2017 Email from Martorana	GUC 0010447
PX-118	August 16, 2017 Email from Steinberg	GUC 0010503
PX-119	August 16, 2017 Email from Golden	GUC 000010439
PX-120	August 16, 2017 Email from Martorana	GUC 0000881-882
PX-121	August 16, 2017 Email from Davidson	GUC 0013936-8
PX-122	August 16, 2017 Email from Williams	GUC 0010502
PX-123	August 16, 2017 Email from Martorana	GUC 0013932-35
PX-124	August 16, 2017 Email from Tennenbaum	GUC 0013252-53
PX-125	August 16, 2017 Email from Andrews	GUC 13939-41
PX-126	August 16, 2017 Email from Andrews	GUC 13932-35
PX-127	August 16, 2017 Email from Cunningham	LC000914-15
PX-128	August 16, 2017 Email from Golden	BR006078-6080
PX-129	August 17, 2017 Email from Vanaskey	GUC_0013930
PX-130	August 17, 2017 Email from LeClair	GUC 0013105-06

PX-131	August 17, 2017 Email from Vanaskey	GUC_0013943-44
PX-132	August 17, 2017 Email from Vanaskey	GUC 001309595-6
PX-133	August 17, 2017 Email from Pickering	GUC 0013885
PX-134	August 17, 2017 Email from Williams	AG0000114-116
PX-135	August 17, 2017 Email from Moss	AG 0003123
PX-136	GUC Trust Quarterly Section 6.2(c) Report and Budget Variance Report as of June 30, 2017	
PX-137	GUC Trust Quarterly Section 6.2(c) Report and Budget Variance Report as of Sept. 30, 2017	
PX-138	GUC Trust Quarterly GUC Trust Reports as of September 30 2017	
PX-139	August 15, 2017 Email from Golden	AG0006838
PX-140	August 15, 2017 Email from Williams	AG0006843
PX-141	August 10, 2017 Email from Moss	AG0005328-351
PX-142	November 14, 2017 Letter from Hilliard	
PX-143	August 16, 2017 GUC Trust 8-K Filing	

EXHIBIT E

GUC Trust and New GM Exhibit List			
<u>Exhibit</u>	<u>Starting Bates No.</u>	<u>Ending Bates No.</u>	<u>Document Description</u>
DX-A	ELPLNTFF00014245	ELPLNTFF00014248	Engagement-Retention Letter to Class Representative Patricia Barker
DX-B			Brown Rudnick Engagement Letter to Berman et al
DX-C	ELPLNTFF00014206	ELPLNTFF00014207	Engagement-Retention Letter to Class Representative Yvonne James-Bivins
DX-D	AG0000008	AG0000009	Email from Weisfelner to Golden re: GUC Trust
DX-E	AG0000920	AG0000935	Email from Steel to Moss et al re: GM, with attachments
DX-F	AG0005147	AG0005184	Email from Moss to Weisfelner et al re: GM, with attachments
DX-G	AG0000966	AG0001007	Email from Steel to Golden et al re: Motors, with attachments
DX-H	AG0000134	AG0000134	Email from Golden to Weintraub et al re: GM - GUC Trust Settlement
DX-I	AG0000012	AG0000012	Email from Weisfelner to Golden et al re: GM
DX-J	AG0000014	AG0000014	Email from Weintraub to Golden re: GUC Settlement
DX-K	GUC_0006281	GUC_0006283	Email from Weintraub to Martorana re: GM GUC Trust Settlement
DX-L	GUC_0004498	GUC_0004503	Email from Weintraub to Moss et al re: GUC Settlement
DX-M	GP002990	GP002995	Email from Golden to Weintraub et al re: GUC Settlement
DX-N	GUC_0003887	GUC_0003891	Email from Weintraub to Golden et al re: GUC Settlement
DX-O	GUC_0013905	GUC_0013910	Email from Spain to Martorana et al re: 6.2(C) Footnotes
DX-P	GUC_0003736	GUC_0003769	Email from Martorana to Forster et al re: Motors – GUC Settlement, with attachments
DX-Q	GUC_0003697	GUC_0003698	Email from Martorana to Steel et al re: Motors – GUC Settlement
DX-R	GUC_0003687	GUC_0003689	Email from Hilliard to Martorana re: settlement discussion
DX-S	GUC_0003605	GUC_0003676	Email from Martorana to Steel et al re: Motors – GUC Settlement
DX-T	GUC_0003459	GUC_0003519	Email from Martorana to Weintraub et al re: Motors – GUC Settlement, with attachments
DX-U	GUC_0002951	GUC_0002955	Email from Weintraub to Martorana et al re: Motors – GUC Settlement
DX-V	GUC_0002730	GUC_0002911	Email from Martorana to Steel et al re: Motors – GUC Settlement, with attachments
DX-W	GUC_0002725	GUC_0002726	Email from Martorana to Steel et al re: GM - settlement status report

GUC Trust and New GM Exhibit List			
<u>Exhibit</u>	<u>Starting Bates No.</u>	<u>Ending Bates No.</u>	<u>Document Description</u>
DX-X	GUC_0008633	GUC_0008635	Steel Letter to Court re: Negotiations (Dkt. No. 14027)
DX-Y	BR000001	BR000009	Email from Martorana to Steel et al re: Motors – GUC Settlement
DX-Z	GUC_0005846	GUC_0005847	Email from Williams to Steel et al re: GM noticing costs
DX-AA	GUC_0001904	GUC_0001927	Email from Weisfelner to Weintraub et al re: Motors – GUC Settlement
DX-BB	GUC_0001817	GUC_0001837	Email from Moss to Cabraser et al re: Motors – GUC Settlement
DX-CC	GUC_0001792	GUC_0001816	Email from Hilliard to Berman et al re: Motors – GUC Settlement
DX-DD	GUC_0001558	GUC_0001791	Email from Steel to Martorana et al re: Motors – GUC Settlement, with attachments
DX-EE	HM003928	HM003928	Email from Hilliard to Spector, with attachments
DX-FF	GUC_0001446	GUC_0001453	Email from Weintraub to Steel et al re: Motors - GUC Settlement
DX-GG	GUC_0010567	GUC_0010620	GUC Trust Form 10-Q for quarter ending 6/30/17
DX-HH	GUC_0001341	GUC_0001350	Email from Martorana to Steel et al re: Motors – GUC Settlement
DX-II	GUC_0005638	GUC_0005642	Email from Steel to Martorana re: Motors – GUC Trust Settlement Agreement
DX-JJ	GUC_0005651	GUC_0005651	Email from Golden to Steinberg et al re: GM
DX-KK	GUC_0001096	GUC_0001097	Email from Martorana to Steel et al re: Motors – GUC Settlement
DX-LL	GUC_0001062	GUC_0001065	Email from Steel to Golden et al re: Motors – GUC Trust Settlement Agreement
DX-MM	AG0006847	AG0006850	Email from Williams to Golden et al re: Arthur called [kinda urgent]
DX-NN	GUC_0005647	GUC_0005650	Email from Steel to Martorana re: Motors – GUC Trust Settlement Agreement
DX-OO	BR006032	BR006033	Email from Gillett to Steel re: GM
DX-PP	GUC_0000905	GUC_0000908	Email from Williams to Steel et al
DX-QQ	GUC_0000904	GUC_0000904	Email from Williams to Steel et al
DX-RR	HM003907	HM003911	Email from Hilliard to Boudette re: Sole and absolute, with attachments
DX-SS	GUC_0000898	GUC_0000899	Email from Williams to Steel et al
DX-TT	GUC_0000888	GUC_0000890	Email from Williams to Steel et al

GUC Trust and New GM Exhibit List			
<u>Exhibit</u>	<u>Starting Bates No.</u>	<u>Ending Bates No.</u>	<u>Document Description</u>
DX-UU	GUC_0005630	GUC_0005630	Email from Steel to Moss et al re: Motors
DX-VV	HM003912	HM003915	Email from Boudette to Hilliard re: Sole and absolute
DX-WW	GUC_0010439	GUC_0010441	Email from Golden to Williams re: GM Letter Executed
DX-XX	GUC_0000881	GUC_0000882	Email from Weisfelner to Martorana et al re: Call Today
DX-YY	HM003905	HM003906	Email from Hilliard to Vlasic et al
DX-ZZ	HM003922	HM003923	Email from Vlasic to Hilliard
DX-AAA	HM004734	HM004737	Email from Hilliard to Vlasic re: Letter to Judge Glenn
DX-BBB	AG0005441	AG0005441	Email from Moss to Weisfelner et al re: GM, with attachments
DX-CCC	AG0005101	AG0005101	Email from Pickering to Vanaskey re: MTLQU
DX-DDD	AG0000114	AG0000116	Email from Williams to Golden
DX-EEE	AG0003123	AG0003123	Email from Seery to Moss re: GM
DX-FFF	GP000001	GP000003	Email from Steel to Martorana et al re: Motors, with attachments
DX-GGG			August 17, 2017 Hearing Transcript
DX-HHH			Weisfelner declaration in support of motion to enforce settlement, with exhibits (Dkt. No. 14093)
DX-III			Motion to Enforce the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust (Dkt. No. 14092)
DX-JJJ			Economic Loss/Brown Rudnick Plaintiffs' Responses and Objections to Interrogatories
DX-KKK			Economic Loss/Brown Rudnick Plaintiffs' Responses and Objections to RFAs
DX-LLL			HMG Claimants' Responses and Objections to RFAs
DX-MMM			Norman Plaintiffs' Responses and Objections to RFAs
DX-NNN			Norman Plaintiffs' Responses and Objections to Interrogatories
DX-OOO			October 3, 2017 Hearing Transcript
DX-PPP			Economic Loss/Brown Rudnick Plaintiffs' Supplemental Responses and Objections to Interrogatories
DX-QQQ			HMG Claimants' Supplemental Responses and Objections to Interrogatories

GUC Trust and New GM Exhibit List			
<u>Exhibit</u>	<u>Starting Bates No.</u>	<u>Ending Bates No.</u>	<u>Document Description</u>
DX-RRR			Norman Plaintiffs' Supplemental Responses and Objections to Interrogatories
DX-SSS			Joinder of the Participating Unitholders in the Motion to Enforce (Dkt. No. 14153)
DX-TTT	GUC_0010988	GUC_0011028	Email from Steel to Weisfelner et al re: Motors
DX-UUU	AG0001041	AG0001082	Email from Steel to Martorana et al re: Motors
DX-VVV	AG0002102	AG0002241	Email from Steel to Moss re: Motors
DX-WWW	GUC_0003680	GUC_0003682	Email from Steel to Martorana et al re: Motors
DX-XXX			August 11, 2017 Conference Transcript
DX-YYY	GUC_0006799	GUC_0007004	Email from Steel to Weintraub et al re: Motors - GUC Trust Settlement Agreement
DX-ZZZ	GUC_0013946	GUC_0013949	Email from Williams to Golden et al
DX-AAAA			HMG Claimants' Responses and Objections to Interrogatories
DX-BBBB	GUC_0003777	GUC_0003823	Email from Martorana to Weintraub et al re: GUC Settlement, with attachments
DX-CCCC			Golden Declaration in Support of Joinder of the Participating Unitholders in the Motion to Enforce (Dkt. No. 14154)
DX-DDDD	GUC_0000001	GUC_0000041	Email fom Martorana to Steel et al re: Motors
DX-EEEE			Proposed Ignition Switch Class Claim, Ex. A (Dkt. No. 13086-2)
DX-FFFF			Proposed Non-Ignition Switch Class Claim, Ex. B (Dkt. No. 13806-3)
DX-GGGG			Norman Plaintiffs' Motion for Authority to File Late Proofs of Claim
DX-HHHH			Norman Plaintiffs' First Supplement to Motion for Authority to File Late Proofs of Claim
DX-IIII			Norman Plaintiffs' Second Supplement to Motion for Authority to File Late Proofs of Claim
DX-JJJJ	GUC_0006767	GUC_0006770	Email from Steel to Williams
DX-KKKK			Letter from Golden to Judge Glenn re: Settlement (Dkt. No. 14063)
DX-LLLL	GUC_0013900	GUC_0013900	Email from Tennenbaum to Vanaskey et al re MTLQU Ignition Switch Settlement
DX-MMMM	BR000367	BR000368	Email from Martorana to Weintraub et al re GUC Settlement
DX-NNNN	BR000507	BR000514	Email from Weintraub to Martorana et al re: GUC Settlement

GUC Trust and New GM Exhibit List			
<u>Exhibit</u>	<u>Starting Bates No.</u>	<u>Ending Bates No.</u>	<u>Document Description</u>
DX-OOOO			Deposition Transcript of Beth Andrews
DX-PPPP			Deposition Transcript of Daniel Golden
DX-QQQQ			Deposition Transcript of Edward Weisfelner
DX-RRRR			Deposition Transcript of Howard Steel
DX-SSSS			Deposition Transcript of James Barton
DX-TTTT			Deposition Transcript of Keith Martorana
DX-UUUU			Deposition Transcript of Melanie Mosley
DX-VVVV			Deposition Transcript of William Weintraub
DX-WWWW	GUC_0002229	GUC_0002484	Email from Martorana to Steel et al re: Motors - GUC Settlement, with attachments
DX-XXXX			Deposition Transcript of Matthew Williams, Vol. I
DX-YYYY	GUC_0002485	GUC_0002724	Email from Steel to Martorana et al re: Motors – GUC Settlement, with attachments
DX-ZZZZ			Deposition Transcript of Matthew Williams, Vol. II
DX-AAAAA	GUC_0003520	GUC_0003589	Email from Martorana to Weintraub et al re: Motors - GUC Settlement, with attachments
DX-BBBBB	GUC_0003677	GUC_0003679	Email from Martorana to Steel et al re: Motors - GUC Settlement
DX-CCCCC	GUC_0003942	GUC_0003986	Email from Weintraub to Martorana et al re: GUC Settlement, with attachments
DX-DDDDD	GUC_0006456	GUC_0006501	Email from Martorana to Weintraub et al re: GUC Settlement, with attachments
DX-EEEEE	GUC_0010022	GUC_0010062	Email from Martorana to Weintraub et al re: GUC Settlement, with attachments
DX-FFFFF	GUC_0010811	GUC_0010883	Motors Liquidation Company GUC Trust Form 10-K
DX-GGGGG	GUC_0010946	GUC_0010982	Email from Martorana to Steel et al re: Motors
DX-HHHHH	GUC_0013102	GUC_0013103	Email from Martorana to Vanaskey et al re: GM/Late Claims - Potential Settlement
DX-IIIII			Hilliard Martinez Gonzalez et al's Memorandum of Law in Support of Motion to Withdraw as Counsel in In re: General Motors LLC Ignition Switch Litigation, Case No. 14-md-02543 (Dkt. No. 4713)
DX-JJJJJ			Hilliard's Declaration in Support of Motion to Withdraw as Counsel in In re: General Motors LLC Ignition Switch Litigation, Case No. 14-md-02543 (Dkt. No. 4714)
DX-KKKKK			Hilliard Martinez Gonzalez et al's Motion to Withdraw as Counsel in In re: General Motors LLC Ignition Switch Litigation, Case No. 14-md-02543 (Dkt. No. 4716)

GUC Trust and New GM Exhibit List			
<u>Exhibit</u>	<u>Starting Bates No.</u>	<u>Ending Bates No.</u>	<u>Document Description</u>
DX-LLLLL			Order re Hilliard Motion to Withdraw in In re: General Motors LLC Ignition Switch Litigation, Case No. 15-cv-06578 (Dkt. No. 128)
DX-MMMMM	GUC_0010437	GUC_0010437	Email from Gillett to Steinberg re: settlement
DX-NNNNN			Errata Sheet for Deposition of Golden
DX-OOOOO			Errata Sheet for Deposition of Andrews
DX-PPPPP			Letter from Steinberg to Judge Glenn re: Update on Matters Related to the Late Claims Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m.

EXHIBIT F

OBJECTIONS to the GUC Trust and New GM Exhibit List (In re Motors Liquidation Co., No. 09-50026)
Submitted on Behalf of the Signatory Plaintiffs and Participating Unit Holders

<u>Ex. No.</u>	<u>Starting Bates #</u>	<u>Ending Bates #</u>	<u>Document Description</u>	<u>Signatory Plaintiffs' and Participating Unit Holders' Objections¹</u>
DX-A	ELPLNTFF00014245	ELPLNTFF00014248	Engagement-Retention Letter to Class Representative Patricia Barker	No objection, subject to the reservation of rights in footnote 1.
DX-B			Brown Rudnick Engagement Letter to Berman et al	No objection, subject to the reservation of rights in footnote 1.
DX-C	ELPLNTFF00014206	ELPLNTFF00014207	Engagement-Retention Letter to Class Representative Yvonne James-Bivins	No objection, subject to the reservation of rights in footnote 1.
DX-D	AG0000008	AG0000009	Email from Weisfelner to Golden re: GUC Trust	No objection, subject to the reservation of rights in footnote 1
DX-E	AG0000920	AG0000935	Email from Steel to Moss et al re: GM, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-F	AG0005147	AG0005184	Email from Moss to Weisfelner et al re: GM, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-G	AG0000966	AG0001007	Email from Steel to Golden et al re: Motors, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-H	AG0000134	AG0000134	Email from Golden to Weintraub et al re: GM - GUC Trust Settlement	Completeness (FRE 106).
DX-I	AG0000012	AG0000012	Email from Weisfelner to Golden et al re: GM	No objection, subject to the reservation of rights in footnote 1.
DX-J	AG0000014	AG0000014	Email from Weintraub to Golden re: GUC Settlement	Relevance/more prejudicial than probative/ waste of time (FRE 401, 402, 403).
DX-K	GUC_0006281	GUC_0006283	Email from Weintraub to Martorana re: GM GUC Trust Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-L	GUC_0004498	GUC_0004503	Email from Weintraub to Moss et al re: GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-M	GP002990	GP002995	Email from Golden to Weintraub et al re: GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-N	GUC_0003887	GUC_0003891	Email from Weintraub to Golden et al re: GUC Settlement	Completeness (FRE 106).
DX-O	GUC_0013905	GUC_0013910	Email from Spain to Martorana et al re: 6.2(C) Footnotes	No objection, subject to the reservation of rights in footnote 1.

¹ In addition to the objections iterated herein, the Signatory Plaintiffs and Participating Unit Holders reserve the right to object at trial to all exhibits listed on the GUC Trust and New GM Trial Exhibit List, on the grounds of, *inter alia*, hearsay (801, 802), foundation (601, 602), relevance/prejudice concerns (FRE 401-403), and/or requirements of completeness/fairness (FRE 106), depending upon the presentation of such evidence at trial.

<u>Ex. No.</u>	<u>Starting Bates #</u>	<u>Ending Bates #</u>	<u>Document Description</u>	<u>Signatory Plaintiffs' and Participating Unit Holders' Objections¹</u>
DX-P	GUC_0003736	GUC_0003769	Email from Martorana to Forster et al re: Motors – GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-Q	GUC_0003697	GUC_0003698	Email from Martorana to Steel et al re: Motors – GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-R	GUC_0003687	GUC_0003689	Email from Hilliard to Martorana re: settlement discussion	No objection, subject to the reservation of rights in footnote 1.
DX-S	GUC_0003605	GUC_0003676	Email from Martorana to Steel et al re: Motors – GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-T	GUC_0003459	GUC_0003519	Email from Martorana to Weintraub et al re: Motors – GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-U	GUC_0002951	GUC_0002955	Email from Weintraub to Martorana et al re: Motors – GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-V	GUC_0002730	GUC_0002911	Email from Martorana to Steel et al re: Motors – GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-W	GUC_0002725	GUC_0002726	Email from Martorana to Steel et al re: GM - settlement status report	No objection, subject to the reservation of rights in footnote 1.
DX-X	GUC_0008633	GUC_0008635	Steel Letter to Court re: Negotiations (Dkt. No. 14027)	No objection, subject to the reservation of rights in footnote 1.
DX-Y	BR000001	BR000009	Email from Martorana to Steel et al re: Motors – GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-Z	GUC_0005846	GUC_0005847	Email from Williams to Steel et al re: GM noticing costs	No objection, subject to the reservation of rights in footnote 1.
DX-AA	GUC_0001904	GUC_0001927	Email from Weisfelner to Weintraub et al re: Motors – GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-BB	GUC_0001817	GUC_0001837	Email from Moss to Cabraser et al re: Motors – GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-CC	GUC_0001792	GUC_0001816	Email from Hilliard to Berman et al re: Motors – GUC Settlement	Hearsay (801, 802); no foundation (601, 602).
DX-DD	GUC_0001558	GUC_0001791	Email from Steel to Martorana et al re: Motors – GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-EE	HM003928	HM003928	Email from Hilliard to Spector, with attachments	Relevance (401, 402, 403); hearsay (801, 802); no foundation (601, 602).
DX-FF	GUC_0001446	GUC_0001453	Email from Weintraub to Steel et al re: Motors - GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-GG	GUC_0010567	GUC_0010620	GUC Trust Form 10-Q for quarter ending 6/30/17	No objection, subject to the reservation of rights in footnote 1.
DX-HH	GUC_0001341	GUC_0001350	Email from Martorana to Steel et al re: Motors – GUC Settlement	No objection, subject to the reservation of rights in

<u>Ex. No.</u>	<u>Starting Bates #</u>	<u>Ending Bates #</u>	<u>Document Description</u>	<u>Signatory Plaintiffs' and Participating Unit Holders' Objections¹</u>
				footnote 1.
DX-II	GUC_0005638	GUC_0005642	Email from Steel to Martorana re: Motors – GUC Trust Settlement Agreement	No objection, subject to the reservation of rights in footnote 1.
DX-JJ	GUC_0005651	GUC_0005651	Email from Golden to Steinberg et al re: GM	No objection, subject to the reservation of rights in footnote 1.
DX-KK	GUC_0001096	GUC_0001097	Email from Martorana to Steel et al re: Motors – GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-LL	GUC_0001062	GUC_0001065	Email from Steel to Golden et al re: Motors – GUC Trust Settlement Agreement	No objection, subject to the reservation of rights in footnote 1.
DX-MM	AG0006847	AG0006850	Email from Williams to Golden et al re: Arthur called [kinda urgent]	No objection, subject to the reservation of rights in footnote 1.
DX-NN	GUC_0005647	GUC_0005650	Email from Steel to Martorana re: Motors – GUC Trust Settlement Agreement	No objection, subject to the reservation of rights in footnote 1.
DX-OO	BR006032	BR006033	Email from Gillett to Steel re: GM	No objection, subject to the reservation of rights in footnote 1.
DX-PP	GUC_0000905	GUC_0000908	Email from Williams to Steel et al	No objection, subject to the reservation of rights in footnote 1.
DX-QQ	GUC_0000904	GUC_0000904	Email from Williams to Steel et al	No objection, subject to the reservation of rights in footnote 1.
DX-RR	HM003907	HM003911	Email from Hilliard to Boudette re: Sole and absolute, with attachments	Hearsay (801, 802); relevance (401-403); foundation (601, 602).
DX-SS	GUC_0000898	GUC_0000899	Email from Williams to Steel et al	No objection, subject to the reservation of rights in footnote 1.
DX-TT	GUC_0000888	GUC_0000890	Email from Williams to Steel et al	No objection, subject to the reservation of rights in footnote 1.
DX-UU	GUC_0005630	GUC_0005630	Email from Steel to Moss et al re: Motors	No objection, subject to the reservation of rights in footnote 1.
DX-VV	HM003912	HM003915	Email from Boudette to Hilliard re: Sole and absolute	Hearsay (801, 802); relevance (401-403); foundation (601, 602).
DX-WW	GUC_0010439	GUC_0010441	Email from Golden to Williams re: GM Letter Executed	No objection, subject to the reservation of rights in footnote 1.
DX-XX	GUC_0000881	GUC_0000882	Email from Weisfelner to Martorana et al re: Call Today	No objection, subject to the reservation of rights in footnote 1.
DX-YY	HM003905	HM003906	Email from Hilliard to Vlastic et al	Hearsay (801, 802); relevance (401-403); foundation (601, 602).
DX-ZZ	HM003922	HM003923	Email from Vlastic to Hilliard	Hearsay (801, 802); relevance (401-403); foundation

<u>Ex. No.</u>	<u>Starting Bates #</u>	<u>Ending Bates #</u>	<u>Document Description</u>	<u>Signatory Plaintiffs' and Participating Unit Holders' Objections¹</u>
				(601, 602).
DX-AAA	HM004734	HM004737	Email from Hilliard to Vlastic re: Letter to Judge Glenn	Hearsay (801, 802); relevance (401-403); foundation (601, 602).
DX-BBB	AG0005441	AG0005441	Email from Moss to Weisfelner et al re: GM, with attachments	Foundation (601, 602); hearsay (801, 802).
DX-CCC	AG0005101	AG0005101	Email from Pickering to Vanaskey re: MTLQU	No objection, subject to the reservation of rights in footnote 1.
DX-DDD	AG0000114	AG0000116	Email from Williams to Golden	No objection, subject to the reservation of rights in footnote 1.
DX-EEE	AG0003123	AG0003123	Email from Seery to Moss re: GM	Foundation (601, 602); hearsay (801, 802); relevance (401-403).
DX-FFF	GP000001	GP000003	Email from Steel to Martorana et al re: Motors, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-GGG			August 17, 2017 Hearing Transcript	No objection, subject to the reservation of rights in footnote 1.
DX-HHH			Weisfelner declaration in support of motion to enforce settlement, with exhibits (Dkt. No. 14093)	No objection, subject to the reservation of rights in footnote 1.
DX-III			Motion to Enforce the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust (Dkt. No. 14092)	No objection, subject to the reservation of rights in footnote 1.
DX-JJJ			Economic Loss/Brown Rudnick Plaintiffs' Responses and Objections to Interrogatories	No objection, subject to the reservation of rights in footnote 1.
DX-KKK			Economic Loss/Brown Rudnick Plaintiffs' Responses and Objections to RFAs	No objection, subject to the reservation of rights in footnote 1.
DX-LLL			HMG Claimants' Responses and Objections to RFAs	No objection, subject to the reservation of rights in footnote 1.
DX-MMM			Norman Plaintiffs' Responses and Objections to RFAs	No objection, subject to the reservation of rights in footnote 1.
DX-NNN			Norman Plaintiffs' Responses and Objections to Interrogatories	No objection, subject to the reservation of rights in footnote 1.
DX-OOO			October 3, 2017 Hearing Transcript	No objection, subject to the reservation of rights in footnote 1.
DX-PPP			Economic Loss/Brown Rudnick Plaintiffs' Supplemental Responses and Objections to Interrogatories	No objection, subject to the reservation of rights in footnote 1.
DX-QQQ			HMG Claimants' Supplemental Responses and Objections to Interrogatories	No objection, subject to the reservation of rights in footnote 1.
DX-RRR			Norman Plaintiffs' Supplemental Responses and Objections to Interrogatories	No objection, subject to the reservation of rights in

<u>Ex. No.</u>	<u>Starting Bates #</u>	<u>Ending Bates #</u>	<u>Document Description</u>	<u>Signatory Plaintiffs' and Participating Unit Holders' Objections¹</u>
				footnote 1.
DX-SSS			Joinder of the Participating Unitholders in the Motion to Enforce (Dkt. No. 14153)	No objection, subject to the reservation of rights in footnote 1.
DX-TTT	GUC_0010988	GUC_0011028	Email from Steel to Weisfelner et al re: Motors	No objection, subject to the reservation of rights in footnote 1.
DX-UUU	AG0001041	AG0001082	Email from Steel to Martorana et al re: Motors	No objection, subject to the reservation of rights in footnote 1.
DX-VVV	AG0002102	AG0002241	Email from Steel to Moss re: Motors	No objection, subject to the reservation of rights in footnote 1.
DX-WWW	GUC_0003680	GUC_0003682	Email from Steel to Martorana et al re: Motors	No objection, subject to the reservation of rights in footnote 1.
DX-XXX			August 11, 2017 Conference Transcript	No objection, subject to the reservation of rights in footnote 1.
DX-YYY	GUC_0006799	GUC_0007004	Email from Steel to Weintraub et al re: Motors - GUC Trust Settlement Agreement	No objection, subject to the reservation of rights in footnote 1.
DX-ZZZ	GUC_0013946	GUC_0013949	Email from Williams to Golden et al	No objection, subject to the reservation of rights in footnote 1.
DX-AAAA			HMG Claimants' Responses and Objections to Interrogatories	No objection, subject to the reservation of rights in footnote 1.
DX-BBBB	GUC_0003777	GUC_0003823	Email from Martorana to Weintraub et al re: GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-CCCC			Golden Declaration in Support of Joinder of the Participating Unitholders in the Motion to Enforce (Dkt. No. 14154)	No objection, subject to the reservation of rights in footnote 1.
DX-DDDD	GUC_0000001	GUC_0000041	Email fom Martorana to Steel et al re: Motors	No objection, subject to the reservation of rights in footnote 1.
DX-EEEE			Proposed Ignition Switch Class Claim, Ex. A (Dkt. No. 13086-2)	106 incomplete
DX-FFFF			Proposed Non-Ignition Switch Class Claim, Ex. B (Dkt. No. 13806-3)	106 incomplete
DX-GGGG			Norman Plaintiffs' Motion for Authority to File Late Proofs of Claim	FRE 401-403 (this is not relevant to the issue of whether or not a binding agreement was reached between the parties, and any alleged relevance would be substantially outweighed by the risk of confusion of the issues or by considerations of undue delay/ waste of time).
DX-HHHH			Norman Plaintiffs' First Supplement to Motion for Authority to File Late Proofs of Claim	FRE 401-403 (this is not relevant to the issue of whether or not a binding agreement was reached between the parties, and any alleged relevance would be substantially outweighed by the risk of confusion of

<u>Ex. No.</u>	<u>Starting Bates #</u>	<u>Ending Bates #</u>	<u>Document Description</u>	<u>Signatory Plaintiffs' and Participating Unit Holders' Objections¹</u>
				the issues or by considerations of undue delay/ waste of time).
DX-III			Norman Plaintiffs' Second Supplement to Motion for Authority to File Late Proofs of Claim	FRE 401-403 (this is not relevant to the issue of whether or not a binding agreement was reached between the parties, and any alleged relevance would be substantially outweighed by the risk of confusion of the issues or by considerations of undue delay/ waste of time).
DX-JJJJ	GUC_0006767	GUC_0006770	Email from Steel to Williams	No objection, subject to the reservation of rights in footnote 1.
DX-KKKK			Letter from Golden to Judge Glenn re: Settlement (Dkt. No. 14063)	No objection, subject to the reservation of rights in footnote 1.
DX-LLLL	GUC_0013900	GUC_0013900	Email from Tennenbaum to Vanaskey et al re MTLQU Ignition Switch Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-MMMM	BR000367	BR000368	Email from Martorana to Weintraub et al re GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-NNNN	BR000507	BR000514	Email from Weintraub to Martorana et al re: GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-OOOO			Deposition Transcript of Beth Andrews	Hearsay (801, 802).
DX-PPPP			Deposition Transcript of Daniel Golden	Hearsay (801, 802).
DX-QQQQ			Deposition Transcript of Edward Weisfelner	Hearsay (801, 802).
DX-RRRR			Deposition Transcript of Howard Steel	Hearsay (801, 802).
DX-SSSS			Deposition Transcript of James Barton	Hearsay (801, 802).
DX-TTTT			Deposition Transcript of Keith Martorana	Hearsay (801, 802).
DX-UUUU			Deposition Transcript of Melanie Mosley	Hearsay (801, 802).
DX-VVVV			Deposition Transcript of William Weintraub	Hearsay (801, 802).
DX- WWWW	GUC_0002229	GUC_0002484	Email from Martorana to Steel et al re: Motors - GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-XXXX			Deposition Transcript of Matthew Williams, Vol. I	Hearsay (801, 802).
DX-YYYY	GUC_0002485	GUC_0002724	Email from Steel to Martorana et al re: Motors – GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-ZZZZ			Deposition Transcript of Matthew Williams, Vol. II	Hearsay (801, 802).
DX-AAAA	GUC_0003520	GUC_0003589	Email from Martorana to Weintraub et al re: Motors - GUC Settlement, with attachments	No objection, subject to the reservation of rights in

<u>Ex. No.</u>	<u>Starting Bates #</u>	<u>Ending Bates #</u>	<u>Document Description</u>	<u>Signatory Plaintiffs' and Participating Unit Holders' Objections¹</u>
				footnote 1.
DX-BBBBB	GUC_0003677	GUC_0003679	Email from Martorana to Steel et al re: Motors - GUC Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-CCCCC	GUC_0003942	GUC_0003986	Email from Weintraub to Martorana et al re: GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-DDDDD	GUC_0006456	GUC_0006501	Email from Martorana to Weintraub et al re: GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-EEEEEE	GUC_0010022	GUC_0010062	Email from Martorana to Weintraub et al re: GUC Settlement, with attachments	No objection, subject to the reservation of rights in footnote 1.
DX-FFFFF	GUC_0010811	GUC_0010883	Motors Liquidation Company GUC Trust Form 10-K	No objection, subject to the reservation of rights in footnote 1.
DX-GGGGG	GUC_0010946	GUC_0010982	Email from Martorana to Steel et al re: Motors	No objection, subject to the reservation of rights in footnote 1.
DX-HHHHH	GUC_0013102	GUC_0013103	Email from Martorana to Vanaskey et al re: GM/Late Claims - Potential Settlement	No objection, subject to the reservation of rights in footnote 1.
DX-IIIII			Hilliard Martinez Gonzalez et al's Memorandum of Law in Support of Motion to Withdraw as Counsel in In re: General Motors LLC Ignition Switch Litigation, Case No. 14-md-02543 (Dkt. No. 4713)	Relevance; more prejudicial than probative/ confusion of the issues/ waste of time (401, 402, 403).
DX-JJJJJ			Hilliard's Declaration in Support of Motion to Withdraw as Counsel in In re: General Motors LLC Ignition Switch Litigation, Case No. 14-md-02543 (Dkt. No. 4714)	Relevance; more prejudicial than probative/ confusion of the issues/ waste of time (401, 402, 403).
DX-KKKKK			Hilliard Martinez Gonzalez et al's Motion to Withdraw as Counsel in In re: General Motors LLC Ignition Switch Litigation, Case No. 14-md-02543 (Dkt. No. 4716)	Relevance; more prejudicial than probative/ confusion of the issues/ waste of time (401, 402, 403).
DX-LLLLL			Order re Hilliard Motion to Withdraw in In re: General Motors LLC Ignition Switch Litigation, Case No. 15-cv-06578 (Dkt. No. 128)	Relevance; more prejudicial than probative/ confusion of the issues/ waste of time (401, 402, 403).
DX-MMMMM	GUC_0010437	GUC_0010437	Email from Gillett to Steinberg re: settlement	Hearsay (801, 802); foundation (601, 602); relevance, more prejudicial than probative/ confusion of the issues/ waste of time (401, 402, 403) (this is irrelevant to the issue presented in phase 1, as it has no bearing on whether or not the parties had a binding settlement agreement),
DX-NNNN			Errata Sheet for Deposition of Golden	Hearsay (801, 802).
DX-OOOO			Errata Sheet for Deposition of Andrews	Hearsay (801, 802); not proper errata material.
DX-PPPP			Letter from Steinberg to Judge Glenn re: Update on Matters Related to the Late Claims Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m.	No objection, subject to the reservation of rights in footnote 1.

GUC Trust and New GM Objections to Plaintiffs' and Participating Unitholders' Exhibit List			
Exhibit No.	Bates	Description	GUC Trust and New GM Objections
PX-001	BR005717-5740	Settlement Agreement between GUC and Plaintiffs	
PX-002	BR001936-1937	May 9, 2017 Email from Steel	
PX-003		May 17, 2017 Hearing Transcript at 266-267	
PX-004	BR002322	May 22, 2017 Email from Williams	
PX-005	BR007564-7578	June 6, 2017 Email from Steel	
PX-006	BR004584-4621 #7452.1	June 9, 2017 Email from Moss	
PX-007	BR004622-4623	June 11, 2017 Email from Steel	
PX-008	BR004675-4715 GUC_0010989 and attachments	June 15, 2017 Email from Steel	
PX-009	BR004761-4797 GUC_0010965 and attachments	June 23, 2017 Email from Martorana	
PX-010	BR004718-4729	June 26, 2017 Email from Martorana	
PX-011	BR003749-88 GUC_0000333 and attachments	July 3, 2017 Email from Steel	
PX-012	BR004176-456	July 5, 2017 Letter from Steinberg to Judge Glenn	
PX-013	BR004460-4501 GUC_0000022 and attachments	July 6, 2017 Email from Martorana	
PX-014	GUC_0006286	July 10, 2017 Email from Weintraub	
PX-015	BR000359	July 11, 2017 Email from Hilliard	Hearsay; Relevance
PX-016	BR002323-2328	July 12, 2017 Email from Steel	
PX-017	BR002330-2372 GUC_0004213 and attachments	July 12, 2017 Email from Martorana	
PX-018	BR002373-2572	July 13, 2017 Email from Steel	Hearsay; Relevance
PX-019	BR002573-2617 GUC_0003965 and attachments	July 14, 2017 Email from Weintraub	
PX-020	BR002622-2667 GUC_0009750 and attachments	July 17, 2017 Email from Martorana	
PX-021	BR002669-2714 GUC_0003920 and attachments	July 18, 2017 Email from Weintraub	
PX-022	BR002868-2878	July 18, 2017 Email from Weintraub	
PX-023	GUC_0010413	July 19, 2017 Letter from Steinberg to Gillett	
PX-024	GUC_0010434	July 19, 2017 Email from Gillett to Davidson	
PX-025	BR002908-2968 GUC_0009453 and attachments	July 19, 2017 Email from Forster	
PX-026	BR002969-3015 GUC_0003802 and attachments	July 20, 2017 Email from Martorana	
PX-027	GUC_0013905-10	July 20, 2017 Email from Martorana	
PX-028	AG 0005746-779	July 25, 2017 Email from Martorana	
PX-029	BR003073-3210	July 25, 2017 Email from Steel	
PX-030	BR003211-3244 GUC_0009347 and attachments	July 26, 2017 Email from Steel	

GUC Trust and New GM Objections to Plaintiffs' and Participating Unitholders' Exhibit List			
Exhibit No.	Bates	Description	GUC Trust and New GM Objections
PX-031	BR003262-3267	July 27, 2017 Email from Steel	
PX-032	BR003277-3348 GUC_0003644 and attachments	July 27, 2017 Email from Martorana	
PX-033	GUC_0003217-23	July 28, 2017 Email from Weintraub	
PX-034	BR003354-3423 GUC_0003546 and attachments	July 28, 2017 Email from Martorana	
PX-035	BR003436-3495	July 28, 2017 Email from Martorana	
PX-036	HM001573	July 31, 2017 Email from Weintraub	
PX-037	BR006091	August 2, 2017 Email from Moss	
PX-038	BR006092-6137 GUC_0002981 & attachments	August 2, 2017 Email from Martorana	
PX-039	GUC_0002912 and attachments	August 3, 2017 Email from Steel	
PX-040	GP002042-2223 GUC_0002758	August 3, 2017 Email from Martorana	
PX-041	BR006164-6344	August 3, 2017 Email from Martorana	
PX-042	BR006162-6163	August 3, 2017 Email from Martorana	
PX-043	AG 0000032-33	August 7, 2017 Email from Moss	
PX-044	BR006376-6612 GUC_0002514 & attachments	August 7, 2017 Email from Steel	
PX-045	BR006635-6640	August 8, 2017 Email from Steel	
PX-046	BR006651-6902 GUC_0002259 & attachments	August 8, 2017 Email from Martorana	
PX-047	BR007012-7017	August 9, 2017 Email from Golden	
PX-048	GP001540	August 9, 2017 Email from Golden	
PX-049	BR006977-6978	August 9, 2017 Email from Williams	
PX-050	BR007305-7316	August 10, 2017 Email from Golden	
PX-051	GUC 0013890-93	August 10, 2017 Email from Vanaskey	
PX-052	BR007488-7588	August 10, 2017 Email from Steel	
PX-053	Weisfelner Declaration	August 11, 2017 Weisfelner Declaration Ex C - Experts of 8/11/17 Hearing Transcript	
PX-054	AG 0005375-395	August 11, 2017 Email from Moss	
PX-055	HBSS000928	August 11, 2017 Bloomberg Article	Hearsay
PX-056	BR005064-5293 GUC_0001589 & attachments; GUC_0001522 & attachment	August 11, 2017 Email from Steel	
PX-057	GP000692-93	August 11, 2017 Email from Steel	
PX-058	BR005329-5338	August 11, 2017 Email from Fox	
PX-059	GUC_13954	August 11, 2017 Email from Gillett	
PX-060	GUC_13953	August 12, 2017 Email from Vanaskey	
PX-061	AG 0004355-4445	August 12, 2017 Email from Weintraub	
PX-062	BR005373-5383	August 12, 2017 Email from Norman	
PX-063	BR005468-5484	August 12, 2017 Email from Martorana	
PX-064	GP00535-554;	August 12, 2017 Email from Martorana	
PX-065	GP000059-66	Final Execution Version of Andrews Declaration	

GUC Trust and New GM Objections to Plaintiffs' and Participating Unitholders' Exhibit List			
Exhibit No.	Bates	Description	GUC Trust and New GM Objections
PX-066	GUC 0013092	August 14, 2017 Email from Andrews	
PX-067	BR005770-5772	August 14, 2017 Email from Moss	
PX-068	GUC 0010509-566	August 11, 2017 MDL Hearing Transcript	
PX-069	GUC_0013248	August 14, 2017 Email from Hartgen	Hearsay; Relevance
PX-070	AG 0004448-449	August 14, 2017 Email from Moss	
PX-071	GUC 5647-650	August 14, 2017 Email from Golden	
PX-072	GUC 0007042-051	August 14, 2017 Email from Martorana	
PX-073	BR005760-5769	August 14, 2017 Email from Steel	
PX-074	AG 0006709- 726	August 14, 2017 Email from Martorana	
PX-075	BR005804-6003 GUC_0006799 & attachments	August 14, 2017 Email from Steel	
PX-076	GUC_0013923	August 14, 2017 Email from Martorana	
PX-077	BR006006-6009	August 14, 2017 Email from Martorana	
PX-078	BR006024-6026	August 14, 2017 Email from Steel	
PX-079	GP000013-16	August 14, 2017 Email from Steel	
PX-080	BR006024-6026	August 14, 2017 Email from Steel	
PX-081	BR005593-5596	August 14, 2017 Email from Hilliard	
PX-082	GP001298-1302	August 14, 2017 Email from Hilliard	
PX-083	GUC 0010402-403	August 14, 2017 Email from Gillett	
PX-084	GUC 0010399-10401	August 14, 2017 Email from Davidson	
PX-085	BR005790-5793	August 14, 2017 Email from Norman	
PX-086	GUC 0001066-069	August 14, 2017 Email from Cabraser	
PX-087	GUC 0005647-650	August 14, 2017 Email from Steel	
PX-088	GUC_0013928	August 14, 2017 Email from Martorana	
PX-089	BR005545-5549	August 14, 2017 Email from Steel	
PX-090	BR005601-5605	August 14, 2017 Email from Steel	
PX-091	BR005550-5553	August 14, 2017 Email from Steel	
PX-092	GP000617	August 14, 2017 Email from Steel	
PX-093	AG0006847-50	August 14, 2017 Email from Gillett	
PX-094	BR005613-5754	August 14, 2017 Email from Steel	
PX-095	GUC 010567-620	Form 10-Q	
PX-096	GUC 0010416-418	August 14, 2017 Email from Gillett	
PX-097	GUC 0012695-98	August 15, 2017 Email from Cordasco	Hearsay; Relevance
PX-098	GUC 0013107-111	August 15, 2017 Email from Vanaskey	
PX-099	GUC 0013097-101	August 15, 2017 Email from Vanaskey	Hearsay; Relevance
PX-100	BR006032-6033	August 15, 2017 Email from Gillett	
PX-101	GUC 0010490	August 15, 2017 Email from Steinberg	
PX-102	GUC 10414-415	August 15, 2017 Email from Gillett	
PX-103	GUC 0000913-919	August 15, 2017 Email from Gillett	
PX-104	GUC_0013929	June 16, 2017 Email from Gillett	
PX-105	BR006034-6036	August 15, 2017 Email from Moss	
PX-106	BR006081-6082	August 16, 2017 Email from Williams	

GUC Trust and New GM Objections to Plaintiffs' and Participating Unitholders' Exhibit List			
Exhibit No.	Bates	Description	GUC Trust and New GM Objections
PX-107	GUC 0000904	August 16, 2017 Email from Williams	
PX-108	GUC 0010446	August 16, 2017 Email from Williams	
PX-109	GUC_0013942	August 16, 2017 Email from Andrews	
PX-110	GUC_0010445	August 16, 2017 Email from Williams	
PX-111	BR006071-6072	August 16, 2017 Email from Gillett	
PX-112	BR006083	August 16, 2017 Email from Howard	
PX-113	GUC 0010443	August 16, 2017 Email from Williams	
PX-114	GUC 0010485	August 16, 2017 Email from Steinberg	
PX-115	GUC 0010442	August 16, 2017 Email from Williams	
PX-116	AG 0006844-6846	August 16, 2017 Email from Williams	
PX-117	GUC 0010447	August 16, 2017 Email from Martorana	
PX-118	GUC 0010503	August 16, 2017 Email from Steinberg	
PX-119	GUC 000010439	August 16, 2017 Email from Golden	
PX-120	GUC 0000881-882	August 16, 2017 Email from Martorana	
PX-121	GUC 0013936-8	August 16, 2017 Email from Davidson	
PX-122	GUC 0010502	August 16, 2017 Email from Williams	
PX-123	GUC 0013932-35	August 16, 2017 Email from Martorana	
PX-124	GUC 0013252-53	August 16, 2017 Email from Tennenbaum	
PX-125	GUC 13939-41	August 16, 2017 Email from Andrews	
PX-126	GUC 13932-35	August 16, 2017 Email from Andrews	
PX-127	LC000914-15	August 16, 2017 Email from Cunningham	
PX-128	BR006078-6080	August 16, 2017 Email from Golden	Hearsay; Relevance
PX-129	GUC_0013930	August 17, 2017 Email from Vanaskey	
PX-130	GUC 0013105-06	August 17, 2017 Email from LeClair	
PX-131	GUC_0013943-44	August 17, 2017 Email from Vanaskey	
PX-132	GUC 001309595-6	August 17, 2017 Email from Vanaskey	
PX-133	GUC 0013885	August 17, 2017 Email from Pickering	
PX-134	AG0000114-116	August 17, 2017 Email from Williams	
PX-135	AG 0003123	August 17, 2017 Email from Moss	
PX-136		GUC Trust Quarterly Section 6.2(c) Report and Budget Variance Report as of June 30, 2017	
PX-137		GUC Trust Quarterly Section 6.2(c) Report and Budget Variance Report as of Sept. 30, 2017	
PX-138		GUC Trust Quarterly GUC Trust Reports as of September 30 2017	
PX-139	AG0006838	August 15, 2017 Email from Golden	
PX-140	AG0006843	August 15, 2017 Email from Williams	
PX-141	AG0005328-351	August 10, 2017 Email from Moss	
PX-142		November 14, 2017 Letter from Hilliard	
PX-143		August 16, 2017 GUC Trust 8-K Filing	

EXHIBIT H

**In re: MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026**

**Plaintiffs and Participating Unitholders' Affirmative Designations of the Deposition
Testimony of Beth Andrews and the GUC Trust and New GM's Objections Thereto**

Beth Andrews November 15, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM Objections
Designation Begin	Designation End	
11:14	11:25	
16:20	16:25	
17:14	18:1	
18:15	18:18	Vague and ambiguous; Compound (FRE 611(a)); Lack of foundation (FRE 602).
18:22	18:24	Vague and ambiguous; Compound (FRE 611(a)); Lack of foundation (FRE 602).
22:14	22:20	
22:24	22:25	
25:2	25:9	
26:1	26:2	
26:6	26:13	
27:9	27:10	
27:14	27:16	
30:22	31:16	
39:11	39:16	Relevance; Vague and ambiguous; Lack of foundation (FRE 602).
39:18	40:1	Relevance; Vague and ambiguous; Lack of foundation (FRE 602).
40:5	40:14	Relevance (40:5-14); Vague and ambiguous; Lack of foundation (FRE 602) (40:5).
42:19	42:20	Vague and ambiguous; Lack of foundation (FRE 602).
42:23	43:6	Vague and ambiguous; Lack of foundation (FRE 602) (49:23).
43:8	43:14	
46:8	47:9	
47:11	47:25	Vague and ambiguous; Lack of foundation (FRE 602); Cumulative (47:22).

Beth Andrews November 15, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM Objections
Designation Begin	Designation End	
48:5	49:10	Vague and ambiguous; Lack of foundation (FRE 602); Cumulative (48:5).
56:6	56:8	
56:12	56:15	
56:17	56:21	
59:3	59:16	Relevance.
59:23	60:9	Relevance.
60:11	60:15	Relevance.
60:20	61:10	Relevance.
61:18	64:1	Relevance.
64:5	64:15	Relevance
64:19	64:20	Relevance
70:21	71:6	Vague and ambiguous (71:3-6).
71:8	71:9	Vague and ambiguous.
71:16	71:21	Vague and ambiguous; question is incomplete as stated.
72:13	72:15	Asked & Answered (FRE 403)
72:20	72:20	
72:21	73:25	Vague and ambiguous; Mischaracterizes testimony (73:21-73:25).
74:3	74:20	Vague and ambiguous; Mischaracterizes testimony (74:3-4); Lack of foundation or personal knowledge (FRE 602); Calls for speculation (74:17-20).
74:25	75:8	Lack of foundation or personal knowledge (FRE 602); Calls for speculation.
75:13	75:22	Lack of foundation (FRE 602); Calls for speculation (75:13-15).
75:25	76:9	
78:16	80:1	
80:15	81:6	
82:21	84:6	
89:24	90:3	Lack of Foundation (FRE 602)
90:9	90:18	Lack of Foundation (FRE 602)
90:21	90:22	
98:24	99:2	

Beth Andrews November 15, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM Objections
Designation Begin	Designation End	
99:7	99:21	
100:3	100:6	
100:17	100:19	
100:23	101:4	Vague and ambiguous.
101:7	101:8	Vague and ambiguous.
101:11	101:23	Vague and ambiguous; Lack of foundation (FRE 602 (101:13-23))
102:2	102:9	Vague and ambiguous; Lack of foundation (FRE 602) 102:2-3).
103:6	104:11	Vague and ambiguous; Lack of foundation (FRE 602) (104:5-11).
104:14	104:22	Vague and ambiguous; Lack of foundation (FRE 602) (104:16-22).
104:25	106:14	Vague and ambiguous; Lack of foundation (FRE 602) (104:25).
107:2	109:2	
109:10	110:22	Vague and ambiguous; Lack of foundation (FRE 602) (110:20-110:22).
110:25	111:21	Vague and ambiguous; Lack of foundation (FRE 602) (110:25-111:2); Mischaracterizes testimony (111:13-21).
111:24	111:25	Mischaracterizes testimony.
115:4	115:7	
118:6	120:16	Calls for speculation; Lack of foundation (FRE 602) (120:12-21).
120:20	121:1	Mischaracterizes testimony; Calls for speculation; Lack of foundation (FRE 602) (120:23-121:1).
121:8	121:15	Mischaracterizes testimony; Calls for speculation; Lack of foundation (FRE 602).
122:5	122:18	Relevance.
123:19	124:11	Relevance.
124:23	125:2	
127:4	127:4	
127:10	127:11	
128:24	129:4	Calls for speculation; Lack of foundation (FRE 602).

Beth Andrews November 15, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM Objections
Designation Begin	Designation End	
130:22	131:23	
132:2	132:3	
132:12	134:15	Vague and ambiguous; lines 14 and 15 are not part of the designated question; Lack of foundation (FRE 602) (134:14-15).
134:24	135:2	Vague and ambiguous; Lack of foundation (FRE 602).
135:5	135:12	
135:24	136:22	Vague and ambiguous; Lack of foundation (FRE 602) (136:15-22).
136:24	137:2	Vague and ambiguous; Lack of foundation (FRE 602).
137:17	138:15	Mischaracterizes testimony (138:10-15).
138:17	138:18	Mischaracterizes testimony.
138:23	139:11	Mischaracterizes testimony; Compound (FRE 611(a));Lack of foundation (FRE 602) (139:4-11).
139:16	140:15	Mischaracterizes testimony; Compound (FRE 611(a));Lack of foundation (FRE 602) (139:16); Lack of foundation (FRE 602) (140:9-23).
140:18	140:25	Lack of foundation (FRE 602).
142:1	143:4	Lack of foundation (FRE 602) (142:22-143:4).
143:7	143:16	Lack of foundation (FRE 602).
143:20	144:1	Lack of foundation (FRE 602).
144:5	145:5	Mischaracterizes testimony; Calls for speculation; Lack of foundation (FRE 602) (145:5-7).
145:7	145:18	Calls for speculation; Lack of foundation (FRE 602) (145:13-18)
145:21	146:2	Calls for speculation; Lack of foundation (FRE 602)
146:6	146:15	Calls for speculation; Lack of foundation (FRE 602) (146:6-7)
150:15	150:19	Vague and ambiguous; Lack of foundation (FRE 602).

Beth Andrews November 15, 2017		
Plaintiffs and Participating Unitholders’ Affirmative Designations		GUC Trust and New GM Objections
Designation Begin	Designation End	
150:22	150:22	Vague and ambiguous; Lack of foundation (FRE 602).
152:1	152:11	
152:15	154:11	Cumulative (154:9-11).
154:15	155:24	Cumulative (154:15–155:1).

GUC Trust and New GM’s Counter Designations of the Deposition Testimony of Beth Andrews and the Plaintiffs and Participating Unitholders’ Objections Thereto

Beth Andrews November 15, 2017		
GUC Trust and New GM’s Counter Designations		Plaintiffs and Participating Unitholders’ Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
9:14	10:12	
18:3	18:5	This is not a valid counter-designation, as neither completeness or fairness requires that it be considered contemporaneously with affirmatively designated content (FRE 106); relevance (401-403).
18:8	18:12	This is not a valid counter-designation, as neither completeness or fairness requires that it be considered contemporaneously with the designated content (FRE 106); relevance (401-403).
23:2	23:15	This is not a valid counter-designation, as neither completeness or fairness requires that it be considered contemporaneously with the designated content (FRE 106); relevance (401-403 – this is irrelevant to the issue of whether or not there was a binding agreement between the parties).
25:11	25:25	
28:13	28:25	This is not a valid counter-designation, as it does not

Beth Andrews November 15, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		“complete” anything affirmatively designated and fairness does not require that it be considered contemporaneously with the designated content (FRE 106); relevance (401-403); foundation (601, 602).
34:21	35:4	This is not a valid counter-designation, and it is not clear which affirmatively designated content this excerpt could possibly purport to “complete” (FRE 106); relevance (FRE 401-403).
41:15	41:17	This is not a valid counter-designation, and further is contextually incomplete in and of itself (omits the relevant date discussion) (FRE 106); mischaracterizes testimony; relevance (401-403).
42:3	42:7	This is not a valid counter-designation, as it does not “complete” anything affirmatively designated and is in fact incomplete/out-of-context in and of itself (omits the relevant date discussion) (FRE 106); mischaracterizes testimony; hearsay (801, 802).
53:17	53:22	Not a valid counter-designation (does not “complete” anything affirmatively designated) (106); hearsay (801, 802); hearsay within hearsay (805); lacks foundation/ personal knowledge (601, 602).
54:24	55:4	Relevance (401-403); hearsay (801, 802); not a valid counter-designation because it does not “complete”

Beth Andrews November 15, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		anything affirmatively designated and fairness does not require that it be considered contemporaneously with the designated content (106).
57:3	57:5	This is not a valid counter-designation as it does not "complete" anything affirmatively designated and fairness does not require that it be considered contemporaneously with the designated content (106); Relevance (401-403).
68:6	68:13	This is not a valid counter-designation as it does not "complete" anything affirmatively designated and fairness does not require that it be considered contemporaneously with the designated content (106); Improper opinion evidence (702); Foundation (601, 602).
68:15	68:19	This is not a valid counter-designation as it does not "complete" anything affirmatively designated, and fairness does not require that it be considered contemporaneously with the designated content (106); Improper opinion evidence (702); Foundation (601, 602).
69:23	70:1	Not a valid counter-designation, as fairness or completeness requirements do not necessitate its inclusion with the designated content (106) ; 403 (more confusing than probative); vague and ambiguous; foundation (601, 602).

Beth Andrews November 15, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
70:6	70:17	Not a valid counter-designation, as fairness or completeness requirements do not necessitate its inclusion with the designated content (106); 403 (more confusing than probative); vague and ambiguous.
72:8	72:12	Incomplete on its face and further not a valid counter-designation, as fairness or completeness requirements do not necessitate its inclusion with the designated content (106); hearsay (801, 802); vague and ambiguous.
74:1	74:2	Incomplete on its face and further not a valid counter-designation, as fairness or completeness requirements do not necessitate its inclusion with the designated content (106); improper designation of record objections (401-403 – irrelevant).
74:21	74:24	Incomplete and not a valid counter-designation, as fairness or completeness requirements do not necessitate its inclusion with the designated content (106); improper designation of record objections (401-403 – irrelevant).
75:9	75:12	Incomplete and not a valid counter-designation, as fairness or completeness requirements do not necessitate its inclusion with the designated content (106); improper designation of record objections (401-403 – irrelevant).
77:21	78:4	Not a valid counter-designation (does not “complete” anything

Beth Andrews November 15, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		affirmatively designated) (106); hearsay (801, 802); lacks foundation/ personal knowledge (601, 602); calls for speculation/improper opinion (701, 702).
80:4	80:14	This is not a valid counter-designation, as neither completeness or fairness requires that it be considered contemporaneously with the designated content (FRE 106); relevance (401-403); lacks foundation (601, 602).
82:11	82:20	Hearsay; not a valid counter-designation for completeness or fairness purposes (FRE 106); relevance (401-403); lacks foundation (601, 602); calls for speculation.
84:7	84:23	Not a valid counter-designation for completeness or fairness purposes (FRE 106); relevance (401-403); lacks foundation (601, 602); hearsay (801, 802).
88:22	89:9	Not a valid counter-designation for completeness or fairness purposes (FRE 106); relevance (401-403); lacks foundation (601, 602); hearsay (801, 802).
99:3	99:6	
100:7	100:9	Lacks foundation (601, 602); not a valid counter-designation for completeness or fairness purposes (FRE 106); relevance (401-403); calls for speculation.
100:13	100:16	Lacks foundation (601, 602); not a valid counter-designation for

Beth Andrews November 15, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		completeness or fairness purposes (FRE 106); relevance (401-403).
100:20	100:22	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objections (401-403 – irrelevant).
101:5	101:6	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objections (401-403 – relevance).
104:12	104:13	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objections (401-403 – relevance).
104:23	104:24	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objections (401-403 – relevance).
110:23	110:24	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objections (401-403 – relevance).
112:1	112:7	Not a valid counter-designation for completeness or fairness purposes (106); calls for speculation; lacks foundation (601, 602); relevance (401-403).
112:12	113:3	Not a valid counter-designation for completeness or fairness purposes (106); calls for speculation; lacks foundation (601, 602); relevance (401-403); hearsay (801, 802).

Beth Andrews November 15, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
113:7	113:20	Not a valid counter-designation for completeness or fairness purposes (106); calls for speculation; lacks foundation (601, 602); relevance (401-403); hearsay (801, 802); hearsay within hearsay (804).
113:23	114:3	Not a valid counter-designation for completeness or fairness purposes (106); calls for speculation; lacks foundation or personal knowledge (601, 602).
120:17	120:19	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objections (401-403 – relevance).
121:2	121:7	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objections (401-403 – relevance).
125:7	125:15	Incomplete (starts with an answer, preceding question not designated) (106); Not a valid counter-designation for completeness or fairness purposes (106); hearsay (801, 802); hearsay within hearsay (804); lacks foundation / personal knowledge (601, 602).
126:20	127:2	Not a valid counter-designation for completeness or fairness purposes (106); hearsay (801, 802); lacks foundation / personal knowledge (601, 602).
127:5	127:9	Not a valid counter-designation for completeness or fairness purposes (106); lacks foundation / personal knowledge (601, 602).

Beth Andrews November 15, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
127:14	128:10	Incomplete (starts with an answer, preceding question not designated) (106); not a valid counter-designation for completeness or fairness purposes (106); hearsay (801, 802); lacks foundation / personal knowledge (601, 602).
132:4	132:7	Not a valid counter-designation for completeness or fairness purposes (106).
135:3	135:4	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objection, which is irrelevant (401-403).
136:23	136:23	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objection, which is irrelevant (401-403).
138:16	138:16	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objection, which is irrelevant (401-403).
140:16	140:17	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objection, which is irrelevant (401-403).
150:20	150:21	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objection, which is irrelevant (401-403), and the selective designation of certain record objections in the middle of

Beth Andrews November 15, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		designated testimony and not others is incomplete in and of itself.
154:12	154:14	Not a valid counter-designation for completeness or fairness purposes (106); improper designation of record objection, which is irrelevant (401-403).
156:11	157:1	This is not a valid counter-designation to any of the designated content, and fairness/completeness requirements do not necessitate it being considered contemporaneously therewith (106).
158:1	158:4	Not a valid counter-designation for completeness or fairness purposes (106); hearsay (801, 802); 401-403.
158:7	158:22	Not a valid counter-designation for completeness or fairness purposes (106); hearsay (801, 802); 401-403.
158:25	159:8	Lacks foundation (601, 602); not a valid counter-designation (106).
163:12	163:15	Lacks foundation (601, 602); not a valid counter-designation (106); hearsay (801, 802); calls for speculation.
163:21	164:2	Not a valid counter-designation for completeness or fairness purposes (106); lacks personal knowledge/foundation (601, 602); hearsay (801, 802); calls for speculation.
164:9	164:17	Not a valid counter-designation for completeness or fairness purposes (106); lacks personal knowledge/foundation (601, 602); calls for speculation.

EXHIBIT I

In re MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026

GUC Trust and New GM’s Affirmative Designations of the Deposition Testimony of James Barton and the Plaintiffs and Participating Unitholders’ Objections Thereto

James Barton November 22, 2017		
GUC Trust and New GM’s Affirmative Designations		Plaintiffs and Participating Unitholders’ Objections
Designation Begin	Designation End	
18:15	18:16	106 (completeness/ fairness requires introduction of other portions of testimony which ought in fairness be considered contemporaneously); 401-403 (irrelevant to phase 1 issues, and any minimal relevance is outweighed by risks of confusion of the issues/ waste of time); 601, 602 (lacks foundation).
18:24	19:7	106 (completeness/ fairness requires introduction of other portions of testimony which ought in fairness be considered contemporaneously); 401-403 (irrelevant to phase 1 issues, and any minimal relevance is outweighed by risks of confusion of the issues/ waste of time); 601, 602 (lacks foundation).
21:8	21:17	
22:9	22:14	106 (completeness/ fairness requires introduction of other portions of testimony which ought in fairness be considered contemporaneously); 401-403 (irrelevant to phase 1 issues, and any minimal relevance is outweighed by risks of confusion of the issues/ waste of time); 601, 602 (lacks foundation).
39:7	39:12	106 (completeness/ fairness requires introduction of other portions of testimony which ought in fairness be considered contemporaneously); 401-403 (irrelevant to phase 1 issues, and any minimal relevance is outweighed by risks of confusion of

James Barton November 22, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
		the issues/ waste of time).

Plaintiffs and Participating Unitholders' Affirmative Designations of the Deposition Testimony of James Barton and the GUC Trust and New GM's Objections Thereto

James Barton November 22, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM's Objections
Designation Begin	Designation End	
6:20	6:24	
7:7	7:8	
7:25	8:6	
10:4	10:8	
10:15	11:4	
12:14	12:14	
12:21	12:23	
13:8	14:13	
14:15	15:4	
16:11	16:17	
17:18	17:19	
21:8	22:17	
23:11	23:19	
24:18	24:21	
31:2	31:4	
31:7	31:15	
34:12	34:15	
35:21	36:6	
36:22	36:24	
37:10	37:12	
37:21	38:7	

GUC Trust and New GM's Counter-Designations of the Deposition Testimony of James Barton and the Plaintiffs and Participating Unitholders' Objections Thereto

James Barton November 22, 2017		
GUC Trust and New GM's Counter-Designations		Plaintiffs and Participating Unitholders' Objections
Counter-Designation Begin	Counter-Designation End	
19:23	20:2	Not a valid counter-designation for completeness or fairness purposes (106), Relevance (401)
20:5	20:5	Not a valid counter-designation for completeness or fairness purposes (106), Relevance (401)
20:9	20:10	Not a valid counter-designation for completeness or fairness purposes (106), Relevance (401)
20:12	20:14	Not a valid counter-designation for completeness or fairness purposes (106), Relevance (401)
21:4	21:7	Not a valid counter-designation for completeness or fairness purposes (106), Relevance (401)
23:20	24:1	Not a valid counter-designation for completeness or fairness purposes (106), Relevance (401)
24:12	24:17	Not a valid counter-designation for completeness or fairness purposes (106), Relevance (401)
32:22	33:9	Not a valid counter-designation for completeness or fairness purposes (106), argumentative, asked and answered, improper designation of record objection, which is irrelevant (401-403).
33:13	33:20	Not a valid counter-designation for completeness or fairness purposes (106), argumentative, asked and answered, improper designation of record objection, which is irrelevant (401-403).

Plaintiffs and Participating Unitholders' Counter-Designations of the Deposition Testimony of James Barton and the GUC Trust and New GM's Objections Thereto

James Barton November 22, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
7:7	7:8	Relevance (401/402); Outside the Scope of FRCP 32(a)(6)
8:4	8:6	Relevance (401/402); Outside the Scope of FRCP 32(a)(6)
21:18	22:1	
24:18	24:21	
34:12	34:15	
36:17	36:24	Relevance (401/402); Outside the Scope of FRCP 32(a)(6)
38:2	38:7	Relevance (401/402); Outside the Scope of FRCP 32(a)(6)

EXHIBIT J

In re MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026

GUC Trust and New GM's Affirmative Designations of the Deposition Testimony of Daniel H. Golden and the Plaintiffs and Participating Unitholders' Objections Thereto

Daniel H. Golden November 16, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
14:14	14:17	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
15:11	15:18	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
15:19	15:21	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602)
15:25	16:7	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602)
17:10	17:14	
32:2	32:5	Irrelevant (FRE 401); lack of foundation, calls for expert opinion (FRE 602, 701, 702)
32:8	32:9	Irrelevant (FRE 401); lack of foundation, calls for expert opinion (FRE 602, 701, 702)
32:10	32:15	Irrelevant (FRE 401); lack of foundation, calls for expert opinion (FRE 602, 701, 702)
54:9	54:14	Irrelevant (FRE 401); calls for hearsay (FRE 802)
61:2	61:9	
61:10	61:13	
69:18	70:4	Objection to form vague and ambiguous (FRE 611(a))
70:7	70:8	
70:9	70:19	
72:23	73:14	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
73:15	73:18	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); objection to form compound (FRE 611(a))

Daniel H. Golden November 16, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
73:22	74:10	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); objection to form compound (FRE 611(a))
74:11	74:14	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602); objection to form confusing (FRE 611(a))
74:16	74:18	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602); objection to form confusing (FRE 611(a))
74:19	74:22	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602)
74:23	75:6	Lack of foundation (FRE 602): irrelevant (FRE 401)
75:7	75:18	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602)
75:21	75:21	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602)
75:22	75:25	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602)
76:1	76:15	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602)
78:11	78:15	Objection to form compound (611(a)); lack of foundation, calls

Daniel H. Golden November 16, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
		for expert opinion (FRE 602, 701, 702)
78:17	78:24	Objection to form compound (611(a)); lack of foundation, calls for expert opinion (FRE 602, 701, 702)
78:25	79:2	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
79:3	79:7	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
79:8	79:11	Objection to form compound (611(a)); lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602)
79:13	79:22	Objection to form compound (611(a)); lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); calls for speculation (FRE 602)
83:14	83:18	Irrelevant (FRE 401); lack of personal knowledge (FRE 602)
83:19	83:22	Irrelevant (FRE 401); lack of personal knowledge (FRE 602)
83:23	83:25	Irrelevant (FRE 401); lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); objection to form vague and ambiguous (FRE 611(a))
84:2	84:3	Irrelevant (FRE 401); lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602); objection to form vague and ambiguous (FRE 611(a))
84:4	84:7	Irrelevant (FRE 401); lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of

Daniel H. Golden November 16, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
		personal knowledge (FRE 602)
84:8	84:13	Irrelevant (FRE 401); lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602)
84:15	84:17	Irrelevant (FRE 401); lack of foundation, calls for expert opinion (FRE 602, 701, 702); lack of personal knowledge (FRE 602)
91:2	91:16	Irrelevant (FRE 401); calls for hearsay (FRE 802); objection to form, compound, confusing (FRE 611(a))
91:17	91:19	Irrelevant (FRE 401); objection to form, vague, ambiguous, confusing (FRE 611(a))
91:22	91:23	Irrelevant (FRE 401); objection to form, vague, ambiguous, confusing (FRE 611(a))
107:1	107:14	Objection to form, asked and answered (FRE 611(a))
107:17	107:24	
110:1	110:2	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
110:5	110:7	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
111:20	112:1	Calls for hearsay (FRE 802)
112:2	112:7	Calls for hearsay (FRE 802)
130:13	130:15	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); objection to form, asked and answered (FRE 611(a))
130:19	130:20	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); objection to form, asked and answered (FRE 611(a))
130:21	130:23	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
133:14	133:17	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); objection to form confusing (FRE

Daniel H. Golden November 16, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
		611(a)
133:19	133:19	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); objection to form confusing (FRE 611(a))
137:6	137:10	Lack of foundation, lack of personal knowledge (FRE 602)
137:13	137:13	Lack of foundation, lack of personal knowledge (FRE 602)
137:14	137:18	
141:18	142:3	Calls for hearsay (FRE 802)
146:6	146:15	
146:17	146:20	
151:11	151:15	Calls for hearsay (FRE 802)
154:11	154:14	
154:15	154:19	Lack of foundation, calls for speculation (FRE 602)
154:20	154:20	Objection to form, asked and answered (FRE 611(a))
155:4	155:6	Objection to form, asked and answered (FRE 611(a))
160:4	160:25	
161:1	161:5	Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
161:6	161:8	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); calls for speculation (FRE 602)
161:11	161:21	Lack of foundation, calls for expert opinion (FRE 602, 701, 702); calls for speculation (FRE 602)
162:2	162:6	
163:2	163:5	Calls for hearsay (FRE 802)
163:6	163:10	Calls for hearsay (FRE 802)
163:11	163:17	Calls for hearsay (FRE 802)
163:18	163:24	
179:22	180:8	
180:9	180:23	
180:24	181:2	
181:3	181:6	
181:7	181:11	Calls for hearsay (FRE 802)

Daniel H. Golden November 16, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
181:12	181:14	Calls for hearsay (FRE 802)
181:15	182:2	Lack of foundation, lack of personal knowledge, calls for speculation (FRE 602); Incomplete (FRE 106)
185:6	185:11	
185:12	186:1	Lack of foundation, lack of personal knowledge, calls for speculation (FRE 602)
188:11	188:13	
188:14	188:18	
191:7	191:17	
191:18	191:23	Lack of foundation, calls for speculation, calls for expert opinion (FRE 602, 701, 702)
202:23	203:8	Lack of foundation, calls for speculation, lack of personal knowledge, calls for expert opinion (FRE 602, 701, 702)
203:9	203:9	Lack of foundation, calls for speculation, lack of personal knowledge, calls for expert opinion (FRE 602, 701, 702)
203:11	203:12	Lack of foundation, calls for speculation, lack of personal knowledge, calls for expert opinion (FRE 602, 701, 702)
207:8	207:11	Objection to form, vague and ambiguous (FRE 611(a))
207:14	207:20	Objection to form, vague and ambiguous (FRE 611(a))
207:21	208:13	Lack of foundation, calls for speculation, (FRE 602)
208:14	208:18	Objection to form, asked and answered (FRE 611(a))
208:20	208:21	Objection to form, asked and answered (FRE 611(a))
208:22	208:24	
209:14	209:17	Calls for hearsay (FRE 802); objection to form, vague and ambiguous (FRE 611(a))
210:6	210:6	Calls for hearsay (FRE 802);

Daniel H. Golden November 16, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
		objection to form, vague and ambiguous (FRE 611(a))
210:7	210:9	Calls for hearsay (FRE 802)

Plaintiffs and Participating Unitholders' Counter-Designations of the Deposition Testimony of Daniel H. Golden and the GUC Trust and New GM's Objections Thereto

Daniel H. Golden November 16, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
8:16	9:6	Not Testimony
11:15	11:21	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805)); Outside the Scope of FRCP 32(a)(6)
14:18	15:2	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805)); Outside the Scope of FRCP 32(a)(6)
15:8	15:9	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805)); Outside the Scope of FRCP 32(a)(6)
15:23	15:24	Not Testimony
18:14	19:7	Outside the Scope of FRCP 32(a)(6)
31:18	32:1	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
32:6	32:7	Not Testimony; Outside the Scope of FRCP 32(a)(6)
33:20	33:24	Relevance (FRE 401/402); Not Testimony; Lack of Foundation

Daniel H. Golden November 16, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
		(FRE 602); Hearsay (FRE 801/802/805)); Outside the Scope of FRCP 32(a)(6)
34:5	36:11	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805)); Outside the Scope of FRCP 32(a)(6)
50:13	50:16	Relevance (FRE 401/402); Hearsay (FRE 801/802/805); Not Testimony; Outside the Scope of FRCP 32(a)(6)
50:19	51:11	Relevance (FRE 401/402); Hearsay (FRE 801/802/805); Not Testimony; Outside the Scope of FRCP 32(a)(6)
59:12	59:17	Relevance (FRE 401/402); Not Testimony; Outside the Scope of FRCP 32(a)(6)
59:24	60:5	Relevance (FRE 401/402); Not Testimony; Outside the Scope of FRCP 32(a)(6)
60:8	60:13	Relevance (FRE 401/402); Not Testimony; Outside the Scope of FRCP 32(a)(6)
60:17	60:19	Relevance (FRE 401/402); Not Testimony; Outside the Scope of FRCP 32(a)(6)
62:19	63:6	Relevance (FRE 401/402); Hearsay (FRE 801/802/805); Outside the Scope of FRCP 32(a)(6)
70:5	70:6	Not Testimony
73:19	73:19	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
73:21	73:21	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)

Daniel H. Golden November 16, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
74:15	74:15	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
75:19	75:20	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
78:16	78:16	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
79:12	79:12	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
79:23	79:25	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
80:8	80:17	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
81:18	82:3	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805)); Outside the Scope of FRCP 32(a)(6)
84:1	84:1	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
91:20	91:21	Not Testimony; Outside the Scope of FRCP 32(a)(6)
107:25	108:14	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805); Outside the Scope of FRCP 32(a)(6)
108:24	109:15	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805); Outside the Scope of

Daniel H. Golden November 16, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
		FRCP 32(a)(6)
110:3	110:4	Relevance (FRE 401/402); Lack of Foundation, (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
130:16	130:18	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805); Outside the Scope of FRCP 32(a)(6)
133:18	133:18	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805); Outside the Scope of FRCP 32(a)(6)
136:23	137:5	Not Testimony
137:11	137:11	Not Testimony
144:25	145:18	Relevance (FRE 401/402); Not Testimony
145:21	146:5	Relevance (FRE 401/402); Not Testimony; Outside the Scope of FRCP 32(a)(6)
146:16	146:16	Relevance (FRE 401/402); Not Testimony; Outside the Scope of FRCP 32(a)(6)
148:17	148:25	Relevance (FRE 401/402); Not Testimony; Outside the Scope of FRCP 32(a)(6)
149:3	149:9	Relevance (FRE 401/402); Not Testimony; Outside the Scope of FRCP 32(a)(6)
150:14	151:10	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805); Outside the Scope of FRCP 32(a)(6)

Daniel H. Golden November 16, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
154:21	154:24	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805; Outside the Scope of FRCP 32(a)(6)
159:23	160:3	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805
161:9	161:10	Not Testimony
162:21	163:1	Outside the Scope of FRCP 32(a)(6)
182:3	182:3	Not Testimony
188:4	188:10	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805; Outside the Scope of FRCP 32(a)(6)
191:24	192:2	
199:18	200:10	Lack of Foundation (FRE 602); Not Testimony; Outside the Scope of FRCP 32(a)(6)
203:1	203:1	Not Testimony
203:10	203:10	Not Testimony
207:12	207:13	Not Testimony
208:19	208:19	Relevance (FRE 401/402); Not Testimony; Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805; Outside the Scope of FRCP 32(a)(6)
209:18	210:5	Not Testimony

EXHIBIT K

In re: MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026

**Plaintiffs and Participating Unitholders’ Affirmative Designations of the Deposition
Testimony of Keith Martorana and the GUC Trust and New GM’s Objections Thereto**

Keith Martorana November 20, 2017		
Plaintiffs and Participating Unitholders’ Affirmative Designations		GUC Trust and New GM’s Objections
Designation Begin	Designation End	
9:21	11:14	
12:9	13:15	
13:17	14:10	
23:11	23:15	Vague and ambiguous; Lack of foundation (FRE 602) (23:12–15).
23:19	23:20	Vague and ambiguous; Lack of foundation (FRE 602).
25:11	25:16	
25:19	25:25	Lack of foundation (FRE 602) (25:23-25:25).
26:4	27:1	Lack of foundation (FRE 602) (26:4-7; 26:22-25).
27:6	27:19	Lack of foundation (FRE 602).
32:11	33:25	
35:9	35:12	Lack of foundation (FRE 602).
35:15	36:4	Lack of foundation (FRE 602) (35:15-18).
36:11	36:12	
37:11	38:7	
38:16	38:18	
38:22	39:15	Lack of foundation (FRE 602) (39:10-15).
39:18	43:6	Lack of foundation (FRE 602) (39:18-25; 42:25-43:6).
43:10	43:13	Lack of foundation (FRE 602).
51:25	52:2	Lack of foundation (FRE 602).
52:5	53:19	Lack of foundation (FRE 602) (52:5-9; 53:14-19).
53:24	54:4	Lack of foundation (FRE 602).
58:2	60:2	
60:16	61:8	
66:21	67:7	
67:18	68:3	

Keith Martorana November 20, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM's Objections
Designation Begin	Designation End	
68:17	69:9	
69:11	69:19	
71:1	72:22	
73:17	73:20	
74:4	74:12	
75:21	76:8	Vague and Ambiguous; Lack of foundation (FRE 602).
76:14	77:8	Vague and Ambiguous; Lack of foundation (FRE 602) (76:14-16).
83:9	83:23	Relevance.
84:16	85:15	Relevance.
85:22	86:1	Relevance; Incomplete quotation; Lack of foundation (FRE 602).
86:11	88:4	Relevance (86:11-88:4); Incomplete quotation; Lack of foundation (FRE 602) (86:11-25); Mischaracterizes testimony (88:1-4).
88:8	88:10	Relevance; Lack of foundation (FRE 602); Mischaracterizes testimony.
92:14	92:19	Lack of foundation (FRE 602); Mischaracterizes testimony.
92:24	93:2	Lack of foundation (FRE 602); Mischaracterizes testimony.
103:22	104:1	Lack of foundation (FRE 602).
104:5	104:6	Lack of foundation (FRE 602).
106:19	106:25	Lack of foundation (FRE 602); Mischaracterizes testimony.
107:4	107:10	Lack of foundation (FRE 602); Mischaracterizes testimony.
107:18	107:22	Lack of foundation (FRE 602).
108:1	108:6	Lack of foundation (FRE 602).
109:15	109:24	Lack of foundation (FRE 602); Mischaracterizes testimony.
110:6	110:8	Lack of foundation (FRE 602); Mischaracterizes testimony; designation is incomplete (it begins half-way through the witness' answer).
111:14	112:14	Attorney colloquy; Lack of foundation (FRE 602) (112:12-14).

Keith Martorana November 20, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM's Objections
Designation Begin	Designation End	
112:16	112:19	Attorney colloquy; Lack of foundation (FRE 602).
112:23	113:25	Attorney colloquy; Lack of foundation (FRE 602) (112:23-25); Mischaracterizes testimony (113:19-25).
114:5	114:10	Lack of foundation (FRE 602); Mischaracterizes testimony.
115:15	116:9	Vague and ambiguous; designation is incomplete (does not contain witness' answer) (116:8-9).
116:13	116:14	Vague and ambiguous; designation is incomplete (does not contain witness' answer).
116:17	116:21	
118:7	118:13	Relevance.
123:23	124:7	Relevance.
125:17	125:20	Relevance.
125:25	125:25	Relevance.
126:13	126:16	Relevance; Vague and ambiguous.
126:20	128:10	Relevance (126:20-128:10); Vague and ambiguous (126:20); Lack of foundation (FRE 602); Mischaracterizes testimony (128:7-10).
128:14	129:2	Relevance (128:14-129:2); Lack of foundation (FRE 602); Mischaracterizes testimony (128:14-16); Lack of foundation (FRE 602); Calls for speculation (128:24-129:2).
129:6	129:25	Relevance (129:6-25); Lack of foundation (FRE 602); Calls for speculation (129:6-7; 129:21-25).
130:5	130:23	Relevance (130:5-23); Lack of foundation (FRE 602); Calls for speculation (130:5-8).
131:19	132:7	Relevance (131:19-132:7); Lack of foundation (FRE 602); Mischaracterizes testimony (132:3-7) .

Keith Martorana November 20, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM's Objections
Designation Begin	Designation End	
132:10	132:20	Relevance; Lack of foundation (FRE 602); Mischaracterizes testimony.
133:12	133:15	Relevance.
134:20	135:25	Relevance.
141:22	142:7	
148:25	149:12	Relevance (148:25-149:12); Vague and ambiguous; Lack of foundation (FRE 602) (149:7-12).
149:15	149:18	Relevance; Vague and ambiguous; Lack of foundation (FRE 602).
155:7	155:11	
176:17	178:6	Relevance.
178:20	179:23	Relevance.
183:23	183:25	Relevance (183:23-25); Lack of foundation (FRE 602); Calls for speculation (183:24-25) .
184:4	184:19	Relevance (184:4-19); Lack of foundation (FRE 602); Calls for speculation (184:4-11); Vague and ambiguous (184:13-19).
184:23	184:23	Relevance; Vague and ambiguous; Lack of foundation (FRE 602).
194:14	196:1	Relevance (194:14-196:1); Lack of foundation (FRE 602); Mischaracterizes testimony; Calls for speculation (195:23-196:1).
196:9	197:8	Relevance (196:9-197:8); Lack of foundation (FRE 602); Mischaracterizes testimony; Calls for speculation (196:9-12).
197:11	197:19	Relevance.
200:21	200:22	Not Testimony
204:5	204:6	Not Testimony
216:8	216:9	Not Testimony
235:14	235:22	Relevance (235:14-22); Lack of foundation (FRE 602); Compound (235:14-22).
236:1	236:23	Relevance (236:1-23); Lack of foundation (FRE 602); Compound (236:1-3).

GUC Trust and New GM’s Counter Designations of the Deposition Testimony of Keith Martorana and the Plaintiffs and Participating Unitholders’ Objections Thereto

Keith Martorana November 20, 2017		
GUC Trust and New GM’s Counter Designations		Plaintiffs and Participating Unitholders’ Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation Designation End	
14:12	14:22	This is not a valid counter-designation, as neither completeness or fairness requires that this designation be considered contemporaneously with the designations (FRE 106); foundation/ lacks personal knowledge (FRE 601, 602).
27:21	28:4	This is not a valid counter-designation, as neither completeness or fairness requires that this designation be considered contemporaneously with the designations (FRE 106); Hearsay (801, 802)
35:13	35:14	Improper designation of counsel objection
36:9	36:10	Improper designation of counsel objection
60:3	60:13	Not a valid counter-designation for completeness or fairness purposes (FRE 106); lacks foundation / personal knowledge (601, 602); vague and ambiguous; speculation.
73:21	74:2	Not a valid counter-designation, as neither completeness or fairness requires that this designation be considered contemporaneously with the designations (FRE 106); lacks personal knowledge / foundation (601, 602); speculation
78:12	79:4	First off, this is out-of-context and incomplete in and of itself (106); second, even if it were “complete” by itself, this is not a valid counter-designation to any of the content affirmatively designated (106); hearsay (801, 802); lacks

Keith Martorana November 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation Designation End	
		foundation/ personal knowledge (601, 602); 401-403; speculation/ vague and ambiguous.
79:15	80:14	Not a valid counter-designation for completeness or fairness purposes (FRE 106); lacks foundation / personal knowledge (601, 602); calls for speculation.
80:25	81:13	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (FRE 106); lacks foundation/ personal knowledge (FRE 601, 602).
88:11	88:16	Hearsay (801, 802); lacks foundation/ personal knowledge and is vague and ambiguous (“we did not feel it was appropriate...”)
92:21	92:23	Improper designation of counsel objection
93:3	93:6	Not a valid counter-designation for completeness or fairness purposes (FRE 106); lacks foundation/ personal knowledge (601, 602); relevance (401-403); hearsay (801, 802)
93:13	93:18	Not a valid counter-designation for completeness or fairness purposes (FRE 106); lacks foundation/ personal knowledge (601, 602); relevance (401-403); hearsay (801, 802)
93:21	94:16	Not a valid counter-designation for completeness or fairness purposes (FRE 106); lacks foundation/ personal knowledge (601, 602); relevance (401-403); hearsay (801, 802)

Keith Martorana November 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation Designation End	
108:8	108:9	Not a valid counter-designation for completeness or fairness purposes (FRE 106).
108:15	109:14	Not a valid counter-designation for completeness or fairness purposes (FRE 106); lacks foundation/ personal knowledge (601, 602); improper opinion (701, 702); hearsay (801, 802); vague and ambiguous; more prejudicial than probative/ waste of time (401-403).
110:3	110:5	
129:4	129:5	Improper designation of counsel objection
130:1	130:2	Improper designation of counsel objection
132:8	132:9	Improper designation of counsel objection
149:13	149:14	Improper designation of counsel objection
154:1	155:6	Not a valid counter-designation for completeness or fairness purposes (FRE 106); hearsay (801, 802); 401-403 (more prejudicial than probative); lacks foundation/personal knowledge (601, 602); improper opinion (701, 702)
184:25	185:11	Not a valid counter-designation for completeness or fairness purposes (FRE 106); lacks foundation (601, 602); calls for speculation.
185:15	185:23	Not a valid counter-designation for completeness or fairness purposes (FRE 106); lacks foundation (601, 602); more prejudicial than probative/ confuses the issues/ waste of time (401-403); calls for speculation.
186:2	186:8	Not a valid counter-designation and is moreover incomplete on its own

Keith Martorana November 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation Designation End	
		because it omits the answer to the question (106); even if it were "complete" by itself, this is not a valid counter-designation to any of the content affirmatively designated (106); lacks foundation (601, 602); 401-403 (more prejudicial than probative/ confusion of the issues/ waste of time); calls for speculation.
186:11	186:20	Not a valid counter-designation and is moreover incomplete on its own and out of context (106); includes improper record objections; 401-403 (more prejudicial than probative/ confusion of the issues/ waste of time); calls for speculation; lacks foundation/ personal knowledge (601, 602).
200:6	200:20	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); lacks foundation/ personal knowledge (FRE 601, 602); 401-403.
200:23	201:25	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); 401-403, 801, 802, 701, 702, Lacks foundation (601, 602)
202:12	203:3	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); 401-403

Keith Martorana November 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation Designation End	
		(more prejudicial than probative/ confusion of the issues); hearsay
203:8	203:18	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); further, it is in and of itself incomplete, as it omits the answer to the designated question on line 19 (106); 401-403 (more prejudicial than probative/ confusion of the issues).
203:20	204:4	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); further, it is in and of itself incomplete, as it omits the answer to the designated question on line 19 (106); 401-403 (more prejudicial than probative/ confusion of the issues); improper opinion (701, 702).
204:7	204:23	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); improper opinion (701, 702); 401-403 (more prejudicial than probative/ confusion of the issues).
206:19	207:4	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); 401-403 (more prejudicial than probative/ confusion of the issues).

Keith Martorana November 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation Designation End	
		confusion of the issues); lacks foundation / personal knowledge (601, 602).
208:7	208:12	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); 401-403 (more prejudicial than probative/ confusion of the issues); lacks personal knowledge / foundation (601, 602); calls for speculation.
211:22	212:15	First off, this is out-of-context and incomplete in and of itself (106); second, even if it were "complete" by itself, this is not a valid counter-designation to any of the content affirmatively designated (106); lacks foundation/ personal knowledge (601, 602); 401-403; speculation/ vague and ambiguous.
214:10	215:9	This is not a valid counter-designation, as neither completeness nor fairness requires that this designation be considered contemporaneously with the designated content (106); hearsay (801, 802); 401-403 (more prejudicial than probative/ confusion of the issues); lacks foundation / personal knowledge (601, 602).
216:1	216:7	This is out-of-context and incomplete in and of itself (106); even if it were "complete" by itself, this is not a valid counter-designation to any of the content affirmatively designated (106); hearsay (801, 802); lacks foundation (601, 602); more prejudicial than probative/ confusion of the issues/

Keith Martorana November 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation Designation End	
		waste of time (401-403); improper opinion (701, 702).

EXHIBIT L

In re MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026

**GUC Trust and New GM’s Affirmative Designations of the Deposition Testimony of
Melanie Mosley and the Plaintiffs and Participating Unitholders’ Objections Thereto**

Melanie Mosley November 22, 2017		
GUC Trust and New GM’s Affirmative Designations		Plaintiffs and Participating Unitholders’ Objections
Designation Begin	Designation End	
14:23	14:25	106 (completeness/ fairness requires introduction of other evidence which ought in fairness be considered contemporaneously with this evidence, otherwise it is out of context); 401-403 (irrelevant; any minimal probative value is outweighed by risks of confusion of the issues/ waste of time).
15:4	15:11	106 (completeness/ fairness requires introduction of other evidence which ought in fairness be considered contemporaneously with this evidence, otherwise it is out of context); 401-403 (irrelevant; any minimal probative value is outweighed by risks of confusion of the issues/ waste of time).
17:4	17:9	106 (completeness/ fairness requires introduction of other portions of testimony which ought in fairness be considered contemporaneously); 401-403 (irrelevant to phase 1 issues, and any minimal relevance is outweighed by risks of confusion of the issues/ waste of time); 601, 602 (lacks foundation).
25:8	25:10	106 (completeness/ fairness requires introduction of other portions of testimony which ought in fairness be considered contemporaneously); 401-403 (irrelevant; any minimal probative value is outweighed by risks of confusion of the issues/ waste of time).

Melanie Mosley November 22, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
25:13	25:15	106 (completeness/ fairness requires introduction of other portions of testimony which ought in fairness be considered contemporaneously); 401-403 (irrelevant; any minimal probative value is outweighed by risks of confusion of the issues/ waste of time).

Plaintiffs and Participating Unitholders' Counter-Designations of the Deposition Testimony of Melanie Mosley and the GUC Trust and New GM's Objections Thereto

Melanie Mosley November 22, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
18:24	19:10	

EXHIBIT M

In re MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026

**GUC Trust and New GM’s Affirmative Designations of the Deposition Testimony of
Howard Steel and the Plaintiffs and Participating Unitholders’ Objections Thereto**

Howard Steel November 8, 2017		
GUC Trust and New GM’s Affirmative Designations		Plaintiffs and Participating Unitholders’ Objections
Designation Begin	Designation End	
9:11	9:16	
9:22	9:24	
10:10	10:21	
14:11	14:15	
14:24	15:19	
16:12	16:20	
17:14	17:17	
17:19	18:12	
18:19	19:7	
22:4	22:10	
23:6	23:12	
24:24	24:25	
25:2	25:15	
27:1	27:22	
28:1	28:11	
37:7	37:12	
51:15	52:2	
52:14	52:25	
53:2	53:9	
55:3	55:22	
66:11	66:13	
67:17	68:15	
68:21	69:3	
69:18	69:19	Improper record objection (401-403)
70:5	70:13	Incomplete in and of itself (106); waste of time/ minimal probative value/ confusion of the issues
70:14	70:19	
82:22	83:4	
83:11	83:25	
87:2	87:11	
87:24	89:21	
91:4	91:11	
91:20	92:19	

Howard Steel November 8, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
104:17	104:25	
105:7	105:9	
105:21	107:1	106:16-107:1 (FRE 602, lack of personal knowledge)
108:6	108:19	108:6-12 (FRE 602, lack of personal knowledge)
108:22	109:4	
109:9	109:23	
114:5	115:7	
117:4	117:24	
118:17	119:17	
125:7	125:13	

Plaintiffs and Participating Unitholders' Counter Designations of the Deposition Testimony of Howard Steel and the GUC Trust and New GM's Objections Thereto

Howard Steel November 8, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
10:22	10:25	Prejudicial, Confusing, Misleading (FRE 403); Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805); Outside the Scope of FRCP 32(a)(6)
11:7	11:25	Prejudicial, Confusing, Misleading (FRE 403); Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805); Outside the Scope of FRCP 32(a)(6)
12:12	13:14	Prejudicial, Confusing, Misleading (FRE 403); Lack of Foundation (FRE 602); Hearsay (FRE 801/802/805); Outside the Scope of FRCP 32(a)(6)

Howard Steel November 8, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
69:4	69:17	
81:2	82:6	Prejudicial, Confusing, Misleading (FRE 403); Hearsay (FRE 801/802/805)
82:9	82:13	Prejudicial, Confusing, Misleading (FRE 403); Hearsay (FRE 801/802/805)
82:19	82:21	Prejudicial, Confusing, Misleading (FRE 403); Hearsay (FRE 801/802/805)
115:22	117:3	Prejudicial, Confusing, Misleading (FRE 403); Relevance (FRE 401/402)
119:18	120:13	
123:16	125:6	Prejudicial, Confusing, Misleading (FRE 403)

EXHIBIT N

In re MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026

GUC Trust and New GM’s Affirmative Designations of the Deposition Testimony of
William Weintraub and the Plaintiffs and Participating Unitholders’ Objections Thereto

William Weintraub November 9, 2017		
GUC Trust and New GM’s Affirmative Designations		Plaintiffs and Participating Unitholders’ Objections
Designation Begin	Designation End	
8:8	8:9	
9:17	10:2	
10:11	10:23	
11:18	12:4	
13:12	13:18	
13:22	14:7	FRE 401 (irrelevant); FRE 403; FRE 602 (lack of personal knowledge); FRE 701; FRE 702 (improper expert testimony)
14:9	14:24	14:21-24 – FRE 401 (irrelevant); FRE 403; FRE 602 (lack of personal knowledge); FRE 701; FRE 702 (improper expert testimony)
18:18	19:19	18:24 – FRE 401 (irrelevant); FRE 403 19:3 – FRE 401 (irrelevant); FRE 403 19:9-19 – FRE 401 (irrelevant); FRE 403
22:4	22:8	
25:5	25:15	
27:2	27:4	
27:7	27:9	
31:22	31:25	
32:3	32:4	
38:2	32:8	38:2-8 – FRE 401 (irrelevant); FRE 403; FRE 801, 802 (hearsay within hearsay)
42:25	43:5	
43:10	43:14	
44:12	44:16	
45:12	45:22	45:12-17 – FRE 602 (lack of personal knowledge)
46:1	46:9	45:18-46:9 – FRE 602 (lack of personal knowledge)

William Weintraub November 9, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
47:18	48:3	
48:12	49:6	
50:20	51:10	51:4-5 – FRE 401 (irrelevant); FRE 403
54:23	55:4	
56:8	56:17	56:8-13 – FRE 602 (lack of personal knowledge)
60:2	61:8	60:10-13 – FRE 801, 802 (hearsay within hearsay)
61:11	61:21	
61:25	62:1	
63:11	63:23	
64:13	64:18	
65:17	65:25	
66:18	66:24	
67:7	67:10	
67:12	67:16	
70:9	70:23	
71:17	72:7	72:1-7 – FRE 801, 802 (hearsay within hearsay)
73:22	74:12	
74:20	75:1	
76:3	79:23	77:12-78:17 – FRE 801, 802 (hearsay within hearsay)
84:21	84:24	84:21-85:19 – FRE 401 (irrelevant); FRE 403; FRE 602 (lack of personal knowledge); FRE 701; FRE 702 (improper expert testimony)
85:5	85:19	
88:8	88:9	
88:16	88:24	
89:2	89:15	
91:9	91:13	
91:20	92:17	
93:6	93:12	

**Plaintiffs and Participating Unitholders' Counter-Designations of the Deposition Testimony
of William Weintraub and the GUC Trust and New GM's Objections Thereto**

William Weintraub November 9, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
14:25	15:16	
19:24	20:5	Outside the Scope of FRCP 32(a)(6)
21:24	22:3	
25:16	26:11	
27:10	27:14	
48:4	48:11	
49:7	49:20	
55:5	55:9	
64:5	64:12	Relevance (FRE 401/402)
65:7	65:16	
72:8	72:23	Relevance (401/402); Outside the Scope of FRCP 32(a)(6)
73:9	73:21	
75:7	75:18	
93:13	94:5	Relevance (FRE 401/402); Lack of Foundation (FRE 602); Outside the Scope of FRCP 32(a)(6)
96:20	97:4	Relevance (FRE 401/402); Lack of Foundation (FRE 602); Outside the Scope of FRCP 32(a)(6)
97:7	97:11	Relevance (FRE 401/402); Lack of Foundation (FRE 602); Outside the Scope of FRCP 32(a)(6)
97:23	97:24	Relevance (FRE 401/402); Lack of Foundation (FRE 602); Outside the Scope of FRCP 32(a)(6)
98:1	98:4	Relevance (FRE 401/402); Lack of Foundation (FRE 602); Outside the

William Weintraub November 9, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
		Scope of FRCP 32(a)(6)

EXHIBIT O

In re MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026

GUC Trust and New GM’s Affirmative Designations of the Deposition Testimony of Edward Weisfelner and the Plaintiffs and Participating Unitholders’ Objections Thereto

Edward Weisfelner November 8, 2017		
GUC Trust and New GM’s Affirmative Designations		Plaintiffs and Participating Unitholders’ Objections
Designation Begin	Designation End	
14:24	15:14	
15:21	15:23	
17:18	17:24	
22:13	22:16	
24:1	24:9	
24:15	25:9	
28:11	28:24	
30:5	30:17	
31:4	31:14	
33:15	34:5	
34:11	35:4	
38:9	40:7	
43:24	44:10	
44:20	45:3	
46:9	46:15	
46:23	47:14	
48:10	50:1	
50:6	51:11	
56:4	56:19	
57:12	58:20	
59:5	59:16	
62:17	63:7	
63:16	64:20	
65:23	66:5	
78:16	78:25	
79:5	80:21	
82:11	83:21	82:23-83:21 (FRE 401, 402, irrelevant)
84:9	84:20	
84:25	85:7	
87:8	88:18	
88:23	89:25	
90:11	91:4	
91:7	91:21	

Edward Weisfelner November 8, 2017		
GUC Trust and New GM's Affirmative Designations		Plaintiffs and Participating Unitholders' Objections
Designation Begin	Designation End	
95:25	96:15	
98:20	99:2	
99:4	99:15	
99:21	100:4	
105:1	105:6	105:1-6 (FRD 602, lack of personal knowledge)

Plaintiffs and Participating Unitholders' Counter-Designations of the Deposition Testimony of Edward Weisfelner and the GUC Trust and New GM's Objections Thereto

Edward Weisfelner November 8, 2017		
Plaintiffs and Participating Unitholders' Counter-Designations		GUC Trust and New GM Objections to Counter-Designations
Counter-Designation Begin	Counter-Designation End	
28:25	28:25	Not Testimony
45:4	45:8	
58:21	59:4	
80:22	80:24	Relevance (FRE 401/402); Lack of Foundation (FRE 602)
84:21	84:24	
88:19	88:22	
90:6	90:10	
91:22	92:15	
99:16	99:21	Lack of Foundation (FRE 602)
104:9	104:25	

EXHIBIT P

**In re: MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al., No. 09-50026**

**Plaintiffs and Participating Unitholders' Affirmative Designations of the Deposition
Testimony of Matthew J. Williams and the GUC Trust and New GM's Objections Thereto**

Matthew J. Williams November 13 and 20, 2017		
Plaintiffs and Participating Unitholders' Affirmative Designations		GUC Trust and New GM's Objections
Designation Begin	Designation End	
12:7	12:17	Vague and ambiguous; Compound (FRE 611(a)); Lack of foundation (FRE 602) (12:13-17).
12:21	13:10	
16:3	16:7	
19:21	20:3	
29:14	29:25	
30:6	30:20	
56:2	57:3	
59:6	59:10	Vague and ambiguous; Compound (FRE 611(a)); Lack of foundation (FRE 602).
59:14	59:17	Designation of answer at 59:14-17 is incomplete.
59:20	60:15	
63:2	63:16	
64:4	64:11	Lack of foundation and personal knowledge (FRE 602) (64:4-10).
64:16	64:24	
65:18	65:23	
66:1	66:11	
66:24	67:8	Lack of foundation and personal knowledge (FRE 602); Mischaracterizes testimony.
67:13	68:1	
68:18	69:5	
69:16	69:19	
69:23	70:7	Lack of foundation (FRE 602); Mischaracterizes testimony (70:5-7).
70:10	70:15	
80:2	80:5	Lack of foundation (FRE 602); Mischaracterizes testimony.

Matthew J. Williams November 13 and 20, 2017		
Plaintiffs and Participating Unitholders’ Affirmative Designations		GUC Trust and New GM’s Objections
Designation Begin	Designation End	
80:10	80:17	
85:18	86:9	
90:8	91:8	
93:18	94:2	
99:6	99:13	
99:15	99:16	
101:1	101:8	
103:13	103:24	
104:18	105:2	
130:15	130:24	
136:10	137:7	
144:24	145:3	Asked & Answered (FRE 403)
145:7	145:9	Asked & Answered (FRE 403)
147:11	147:18	Compound
148:5	148:6	Improper Characterization
148:9	148:14	
148:22	149:4	Lack of foundation (FRE 602); Mischaracterizes testimony; Compound (FRE 611(a)).
149:14	149:17	
150:24	151:3	
151:8	152:5	
152:9	152:17	
163:6	163:12	Compound
164:8	164:19	
184:19	185:5	
188:11	188:13	Asked & Answered (FRE 403)
227:23	228:4	Relevance.
228:14	228:16	Relevance.
230:25	231:12	Relevance.
232:2	232:3	Relevance; Lack of foundation (FRE 602)
232:5	232:6	Relevance.
243:24	244:1	Not Testimony

GUC Trust and New GM’s Counter Designations of the Deposition Testimony of Matthew J. Williams and the Plaintiffs and Participating Unitholders’ Objections Thereto

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM’s Counter Designations		Plaintiffs and Participating Unitholders’ Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
16:9	16:14	This designation (counter or not) is incomplete in and of itself (106); even if it were “complete” by itself, this is not a proper valid counter-designation to any of the content affirmatively designated (FRE 106); hearsay (FRE 801, 802); lacks foundation/ personal knowledge (FRE 601, 602)
16:17	16:18	Incomplete (FRE106); does not “complete” anything that in fairness should be introduced contemporaneously with the affirmative designations (FRE106); lacks foundation/personal knowledge
28:23	29:13	Impermissible hearsay (FRE 802)
30:1	30:5	Lack of foundation, calls for speculation (FRE 602)
46:16	46:22	Not a valid counter-designation, as fairness/completeness does not require that this be considered contemporaneously with any of the affirmative designations (FRE 106); Lack of foundation, calls for speculation (FRE 602)
59:11	59:13	Improper record objection (FRE 401-403)
60:1	60:13	Impermissible hearsay (FRE 802)
63:17	63:20	Lacks foundation/personal knowledge (FRE 601, 602); improper counter-designation (completeness / fairness does not require inclusion of this designation with the affirmatively designated content) (FRE 106)).
64:1	64:3	Lacks foundation/personal knowledge (FRE 601, 602);

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		improper counter-designation (completeness / fairness does not require inclusion of this designation with the affirmatively designated content) (FRE 106)).
67:9	67:10	Improper record objection (FRE 401-403)
79:21	79:24	
84:3	84:6	This is not a valid counter-designation and furthermore is incomplete and out of context by itself (FRE 106); Relevance (FRE 401-403); lacks foundation (FRE 601, 602).
94:3	94:6	Not a valid counter-designation and completeness/fairness does not require its inclusion contemporaneously with the affirmatively designated testimony (106); hearsay (FRE 801, 802).
94:7	94:9	Not a valid counter-designation and completeness/fairness does not require its inclusion contemporaneously with the affirmatively designated testimony(106); hearsay (FRE 801, 802).
94:21	95:3	
95:6	96:15	
97:15	98:1	Not a valid counter-designation to the affirmatively designated content (FRE 106); Lack of foundation, calls for expert opinion (FRE 602, 701, 702); calls for speculation (FRE 602)
98:21	99:5	Impermissible hearsay (FRE 802)
99:14	99:14	
99:17	100:11	Relevance (FRE 401); Lack of foundation, calls for expert opinion (FRE 602, 701, 702); Calls for speculation (FRE 602); incomplete

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		(FRE 106); not a valid counter-designation, as neither completeness nor fairness requires that this be considered contemporaneously with the affirmative designations (FRE 106).
100:20	100:25	Relevance (FRE 401); Lack of foundation, calls for expert opinion (FRE 602, 701, 702); Calls for speculation (FRE 602); incomplete (FRE 106); not a valid counter-designation, as neither completeness nor fairness requires that this be considered contemporaneously with the affirmative designations (FRE 106).
101:12	101:17	Relevance (FRE 401); Lack of foundation, calls for expert opinion (FRE 602, 701, 702); Calls for speculation (FRE 602); incomplete (FRE 106); not a valid counter-designation, as neither completeness nor fairness requires that this be considered contemporaneously with the affirmative designations (FRE 106).
126:20	127:3	Not a valid counter-designation, as neither completeness nor fairness requires that this be considered contemporaneously with the affirmative designations (FRE 106); impermissible hearsay (FRE 802); relevance (FRE 401).
127:4	128:7	Not a valid counter-designation, as neither completeness nor fairness requires that this be considered contemporaneously with the affirmative designations (FRE 106); impermissible hearsay (FRE 802); relevance (FRE 401).
128:10	128:14	Not a valid counter-designation, as

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		neither completeness nor fairness requires that this be considered contemporaneously with the affirmative designations (FRE 106); impermissible hearsay (FRE 802); relevance (FRE 401-403)
128:15	129:2	Not a valid counter-designation, as neither completeness nor fairness requires that this be considered contemporaneously with the affirmative designations (FRE 106); impermissible hearsay (FRE 802); Relevance (FRE 401); Lack of foundation, calls for expert opinion (FRE 602, 701, 702)
130:5	130:14	Incomplete/ not a valid counter-designation under FRE 106; Lack of foundation, calls for expert testimony (FRE 602, 701, 702)
134:21	135:5	Hearsay (FRE 801, 802); lack of foundation/ personal knowledge (FRE 601, 602); incomplete (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
135:7	135:18	Hearsay (FRE 801, 802); lack of foundation/ personal knowledge (FRE 601, 602); incomplete (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
136:5	136:9	Lacks foundation/ personal knowledge (FRE 601, 602)
138:20	139:1	Incomplete in and of itself (FRE 106); not a proper counter-

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); calls for speculation (FRE 602)
142:4	143:8	Incomplete in and of itself (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); lack of foundation, calls for expert opinion (FRE 602, 701, 702)
145:10	145:24	Incomplete and out-of-context in and of itself (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires that this be considered contemporaneously with the affirmative designations (FRE 106);
146:9	147:7	Incomplete in and of itself (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
147:21	148:4	Incomplete in and of itself (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
149:5	149:10	Improper record objection (FRE 401-403); not a valid counter-designation because neither completeness nor fairness requires this be considered contemporaneously with the

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		affirmative designations (FRE 106)
153:24	154:5	Incomplete in and of itself (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
154:8	155:2	Improper counter-designation (FRE106) (does not complete any content affirmatively designated by); Lack of foundation (FRE 602)
155:15	155:25	Lack of foundation, speculation (FRE 602); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
156:15	157:25	Incomplete in and of itself (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
158:1	159:24	Relevance (FRE 401-403); hearsay (801, 802)
162:7	163:2	This is not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); moreover, on its own, this excerpt is out of context and incomplete (FRE 106)
164:20	164:25	This is not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		106); moreover, on its own, this excerpt is out of context and incomplete (FRE 106); hearsay (FRE 801, 802).
166:3	166:25	This is not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); moreover, on its own, this excerpt is out of context and incomplete (FRE 106); hearsay (FRE 801, 802).
167:7	167:9	Incomplete in and of itself (FRE 106); not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
186:2	187:13	Calls for hearsay (FRE 802); incomplete (answer designated without the preceding question) (FRE 106); not a proper counter-designation because neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); speculative/lacks foundation (FRE 601, 602).
187:21	188:6	Calls for speculation (FRE 602); incomplete (answer designated without the preceding question) (FRE 106); not a proper counter-designation because neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106).
191:13	192:3	Incomplete (FRE 106); not a proper

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
		counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); improper record objection (FRE 401-403).
192:20	193:5	Incomplete (answer designated without the preceding question) (FRE 106); not a proper counter-designation because neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); speculation; more prejudicial than probative (FRE 401-403).
193:9	193:10	Not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); incomplete in and of itself (FRE 106).
193:15	193:20	Not a proper counter-designation, as neither completeness nor fairness requires this be considered contemporaneously with the affirmative designations (FRE 106); incomplete in and of itself (FRE 106); speculation / lack of foundation (FRE 601, 602).
198:14	199:14	Calls for hearsay (FRE 802)
200:1	201:9	Calls for hearsay (FRE 802); Objection to form vague and ambiguous (FRE 611(a)); Objection to the form confusing (FRE 611(a)); Objection to the form compound (FRE 611(a))
201:18	202:4	Calls for hearsay (FRE 802)
228:17	229:3	

Matthew J. Williams November 13 and 20, 2017		
GUC Trust and New GM's Counter Designations		Plaintiffs and Participating Unitholders' Objections to Counter Designations
Counter-Designation Begin	Counter-Designation End	
239:24	240:19	Calls for hearsay (FRE 802); Calls for speculation (FRE 602)
242:23	243:23	Calls for hearsay (FRE 802); Lack of personal knowledge (FRE 602); Calls for speculation (FRE 602); Objection to form, asked and answered (FRE 611(a))
244:2	244:3	