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 (REG) (Jointly Administered)
KELLY CASTILLO, NICHOLE BROWN, BRENDA ALEXIS DIGIANDOMENICO, VALERIE EVANS, BARBARA ALLEN, STANLEY OZAROWSKI, AND DONNA SANTI, Plaintiffs, v. GENERAL MOTORS COMPANY, f/k/a NEW GENERAL MOTORS COMPANY, INC., Defendant.	Adv. Proc. No. 09-00509
GENERAL MOTORS LLC, f/k/a GENERAL MOTORS COMPANY, Counterclaimant, v. KELLY CASTILLO, NICHOLE BROWN, BRENDA ALEXIS DIGIANDOMENICO, VALERIE EVANS, BARBARA ALLEN, STANLEY OZAROWSKI, DONNA SANTI, LAKINCHAPMAN LLC, ROBERT W. SCHMIEDER II, AND MARK L. BROWN, Counterdefendants.	

ANSWER OF DEFENDANT GENERAL MOTORS LLC TO FIRST AMENDED COMPLAINT, WITH COUNTERCLAIM

Defendant General Motors LLC ("New GM"), formerly known as General Motors Company, for its answer to plaintiffs' First Amended Complaint, admits, alleges and denies as follows:

1. Admits the allegations of paragraph 1 thereof, except denies (a) that the cited or any other allegations in the Class Action were or are meritorious (b) that 150,000 customers were affected by the alleged defect; admits and alleges that a total of approximately 82,000 Saturn 2002-05 VUEs and 2003-04 IONs equipped with VTi transmissions were sold in the United States and that many customers who owned these vehicles experienced no malfunction of their transmissions and many others received free-of-charge transmission repairs pursuant to, and subject to the conditions and limitations of, Saturn's standard new vehicle warranty.

2. Admits the allegations of paragraph 2 thereof.

3. Denies the allegations of paragraph 3 thereof, except admits that paragraph 3 describes plaintiffs' allegations in this case, which New GM denies, and that Exhibit C is a copy of the Amended and Restated Master Sale and Purchase Agreement ("ARMSPA").

4. Admits that paragraph 4 describes one of plaintiffs' allegations which New GM denies.

5. Admits the allegations of paragraph 5 thereof.

6. Admits the allegations of paragraph 6 thereof.

7. Admits the allegations of paragraph 7 thereof.

8. Admits the allegations of paragraph 8 thereof.

9. Admits the allegations of paragraph 9 thereof.

10. Admits the allegations of paragraph 10 thereof.

11. Admits the allegations of paragraph 11 thereof.

12. Admits the allegations of paragraph 12 thereof, except admits and alleges that New GM is a limited liability company organized under the laws of the State of Delaware.

13. Admits the allegations of paragraph 13 thereof.

14. Denies the allegations of paragraph 14 thereof; admits and alleges that this Court has exclusive jurisdiction of this adversary proceeding pursuant to paragraph 71 of its order approving the ARMSPA ("Sale Approval Order").

15. Denies the allegations of paragraph 15 thereof; *see* paragraph 14 *supra*.

16. Denies the allegations of paragraph 16 thereof, except admits that some Saturn VUEs and IONs had VTi transmission repairs more than once during their first 100,000 miles.

17. Denies the allegations of paragraph 17 thereof, except admits that 4-cylinder model year 2002-05 Saturn VUEs and model year 2003-04 Saturn ION Quad Coupes were equipped with VTi transmissions.

18. Denies the allegations of paragraph 18 thereof, except admits and alleges that Old GM authorized Saturn retailers to provide appropriate repairs of VTi transmissions pursuant to the express terms of Saturn's limited new vehicle warranty.

19. Denies the allegations of paragraph 19 thereof, except admits and alleges that Old GM in 2004 voluntarily extended the warranty period for VTi transmissions from 3 years or 36,000 miles, whichever comes first, to 5 years or 75,000 miles, whichever comes first, and that Exhibit V is a true and correct copy of Bulletin 04020.

20. Admits the allegations of paragraph 20 thereof; admits and alleges (a) that plaintiffs' complaints in the Class Action also asserted claims for violation of multiple state consumer protection statutes, breach of implied warranty and unjust enrichment and (b) that Old GM denied and moved to dismiss all of plaintiffs' claims, including their erroneous claims for breach of Saturn's limited express warranty.

21. Denies the allegations of paragraph 21 thereof, except admits that subparagraphs a through f thereof accurately quote plaintiffs' statements in Exhibit D which they filed in the Class Action; admits and alleges that the Saturn limited express warranty includes mileage, durational and other limitations and does not cover alleged "design defects."

22. Denies the allegations of paragraph 22, except admits that the Declaration attached as Exhibit G includes a copy of the 2003 Saturn limited new vehicle warranty; admits and alleges that the relief sought in plaintiff's complaint was different from and in addition to the exclusive remedies provided within the warranty period by Saturn's standard limited warranty.

23. Denies the allegations of paragraph 23, except admits that subparagraphs a and b thereof accurately quote Exhibit H which was filed in the Class Action; admits and alleges that

Old GM consistently maintained (a) that the relief sought by plaintiffs in the Class Action was not covered as a matter of law by the express terms of the Saturn standard limited new vehicle warranty, (b) that plaintiffs asserted other warranty claims in the Class Action that were outside and went beyond the exclusive remedies provided within the warranty period by the standard limited warranty, and (c) that plaintiffs while purporting to "rely upon" the Saturn warranty did not assert any actionable claim pursuant to and within its conditions and limitations.

24. Denies the allegations of paragraph 24, except admits that subparagraphs a and b thereof accurately quote Exhibit I which Old GM filed in the Class Action; further denies that plaintiffs' claims asserted in the Class Action arose under or pursuant to or within the conditions and limitations of Saturn's limited express warranty; incorporates by reference its denials contained in paragraph 23 hereof.

25. Admits that paragraph 25 accurately but incompletely describes certain provisions of the Stipulation of Settlement; admits and alleges that the express terms of this document speak for themselves.

26. Denies the allegations of paragraph 26, except admits that it accurately quotes Exhibit B; admits and alleges that, while plaintiffs purported to assert a claim under Saturn's standard limited warranty in the Class Action, they (a) did not plead any actionable claim for breach of that warranty and (b) expressly agreed in the Stipulation of Settlement that Old GM was not admitting any liability for breach of express warranty.

27. Admits the allegations of paragraph 27 thereof.

28. Admits the allegations of paragraph 28; repeats its denial that plaintiffs asserted any actionable claim for breach of Saturn's standard limited warranty in the Class Action; admits and alleges that plaintiffs agreed in the Stipulation of Settlement that GM was not admitting liability for any alleged breach of express warranty.

29. Admits the allegations of paragraph 29.

30. Admits the allegations of paragraph 30; repeats its denial that plaintiffs asserted any actionable claim for breach of Saturn's standard limited warranty in the Class Action; admits

and alleges that plaintiffs agreed in the Stipulation of Settlement that GM was not admitting liability for any alleged breach of express warranty.

31. Denies the allegations of paragraph 31 thereof, except admits that Exhibit L is a copy of the Memorandum in Support of Final Approval which plaintiffs filed in the Class Action.

32. Admits the allegations of paragraph 32 thereof.

33. Denies the allegations of paragraph 33 thereof, except admits that pursuant to the terms of the Settlement, Old GM was obligated to mail claim forms to class members after the Effective Date of the Settlement, but that its bankruptcy filing preceded the Effective Date, stayed the Class Action and Final Judgment, including the mailing of claim forms.

34. Denies the allegations of paragraph 34 thereof, except admits that Exhibit M is a copy of a motion GM filed that subsequently was granted by this Court; denies that the Settlement was a "Customer Program" or "warranty" obligation as defined in Exhibit M.

35. Denies the allegations of paragraph 35 thereof, except admits that Exhibit M speaks for itself and that subparts a through f accurately quote Exhibit M; denies that the Settlement was a "Customer Program" or "warranty" obligation as defined in Exhibit M.

36. Admits the allegations of paragraph 36 thereof.

37. Admits that paragraph 37 thereof accurately quotes certain provisions of the ARMSPA; admits and alleges that the ARMSPA speaks for itself.

38. Admits the allegations of paragraph 38 thereof.

39. Admits the allegations of paragraph 39 thereof.

40. Denies the allegations of paragraph 40 thereof; admits and alleges that the Class Action Settlement is an Excluded Contract, an Excluded Asset and therefore a Retained Liability under the ARMSPA which Old GM has not assumed, has not assigned to New GM and in fact has moved to reject under section 365 of the Bankruptcy Code and that New GM is not a party to and does not have any liability whatsoever for or on account of the Class Action Settlement.

41. Denies the allegations of paragraph 41 thereof, except admits that additional VTi transmissions have malfunctioned subsequent to preliminary approval of the Stipulation of Settlement and that VTi transmissions which malfunctioned after entry of the preliminary approval order have been described as "fresh failures."

42. Denies the allegations of paragraph 42 thereof, except admits that Old GM following preliminary approval of the Settlement began voluntarily to pay dealers for repairs to malfunctioning VTi transmissions in accordance with the mileages and percentages set forth in the Stipulation of Settlement.

43. Admits the allegations of paragraph 43 thereof.

44. Denies the allegations of paragraph 44 thereof, except admits that Old GM following its bankruptcy filing continued voluntarily to pay dealers for repairs to malfunctioning VTi transmissions in accordance with the mileages and percentages set forth in the Stipulation of Settlement.

45. Denies the allegations of paragraph 45 thereof, except admits that it accurately quotes Exhibit C.

46. Denies the allegations of paragraph 46 thereof, except admits that New GM being under no obligation to do so voluntarily continued Old GM's customer goodwill policy of paying dealers to provide repairs for "fresh failures" as described above for a period of time after the Closing; admits and alleges that New GM discontinued this policy on September 28, 2009.

47. Admits the allegations of paragraph 47; admits and alleges that these statements had no application to the Settlement because it is not, and does not provide benefits under, the Saturn standard limited warranty.

48. Denies the allegations of paragraph 48, except incorporates paragraph 46 hereof by this reference.

49. Admits the allegations of paragraph 49 thereof; admits and alleges that the proposed sale to Penske Automotive Group did not occur..

50. Admits the allegations of paragraph 50 thereof; admits and alleges that these statements had no application to the Settlement because it is not, and does not provide benefits under, the Saturn standard limited warranty.

51. Denies the allegations of paragraph 51; except admits that Old GM and New GM have sought to address customer concerns about the continued validity of the Saturn standard limited warranty; admits and alleges that the terms of Mr. Wagoner's severance are absolutely irrelevant to any issue in this case.

52. Denies the allegations of paragraph 52 thereof and specifically denies that New GM has any obligation whatsoever under the referenced "Agreement and Final Judgment" to which it is not a party and which Old GM neither assumed nor assigned to New GM.

53. Denies the allegations of paragraph 53 thereof; admits and alleges that plaintiffs' claim of intended third-party beneficiary status and all of their claims based upon the ARMSPA are barred by section 9.11 of the ARMSPA.

COUNT I – DECLARATORY JUDGMENT
(Express Assumption of Liability)

54. In response to paragraph 54 thereof, New GM incorporates by reference its admissions, allegations and denials set forth in paragraphs 1 – 53 *supra*.

55. Denies the allegations of paragraph 55 thereof.

56. Denies the allegations of paragraph 56 thereof; admits and alleges that plaintiffs have not submitted the required claim forms as a result of the automatic stay in the Class Action.

COUNT II – DECLARATORY JUDGMENT
(Implied Assumption of Liability)

57. In response to paragraph 57 thereof, New GM incorporates by reference its admissions, allegations and denials set forth in paragraphs 1 – 56 *supra*.

58. Admits the allegations of paragraph 58 thereof.

59. Admits the allegations of paragraph 59 thereof.

60. Denies the allegations of paragraph 60 thereof, except admits that Exhibit W is a copy of the referenced "Saturn VTi Transmission Settlement Clarification."

61. Denies the allegations of paragraph 61 thereof, except admits and alleges that Exhibit U purports to be a declaration by Mr. Richardson.

62. Denies the allegations of paragraph 62 thereof.

COUNT III – DECLARATORY JUDGMENT
(In the Alternative to Counts I and II)

63. In response to paragraph 63 thereof, New GM incorporates by reference its admissions, allegations and denials set forth in paragraphs 1 – 62 *supra*.

64. In response to paragraph 64 thereof, admits that plaintiffs are presenting Count III in the alternative to Counts I and II in the event that the Settlement is determined not to be – as in fact it is not – an Assumed Liability under the ARMSPA.

65. Admits the allegations of paragraph 65 thereof.

66. Denies the allegations of paragraph 66 thereof, except admits and alleges (a) that ARMSPA § 6.6(e) only requires New GM to pay, or reimburse Old GM for, administrative expenses which Old GM incurs after the Closing under Executory Contracts which involve continuing performance by contract counterparties and which have not yet been rejected or identified for immediate rejection (for example, rent under a lease for premises which have not yet been, but ultimately will be, vacated); (b) that this provision did not require New GM to pay, or reimburse Old GM for, prepetition obligations which Old GM itself does not have a current obligation to pay except as may be ultimately adjudicated through the claims process and, ultimately, a Plan of Reorganization.; (c) that Old GM at all times since the Closing has not had any obligation to make payments under the Settlement to plaintiffs or their counsel because the Class Action and the Final Judgment approving the Settlement involve prepetition obligations and have been, and remain, stayed pursuant to section 362 of the Bankruptcy Code; and (d) that the Settlement's alleged status as a "Deferred Executory Contract" therefore has not caused, and cannot cause, New GM to assume any liability whatsoever under the Settlement.

67. Admits the allegations of paragraph 67.

68. Admits the allegations of paragraph 68 thereof insofar rejection of the Settlement by Old GM has not yet been completed; admits and alleges that the Settlement was designated for "reject[ion] later" on June 30, 2009 and that Old GM filed a motion to reject it on November 16, 2009 that is presently set for hearing on December 16, 2009.

69. Denies the allegations of paragraph 69 thereof; admits and alleges that the Settlement was designated for "reject[ion] later" on June 30, 2009 and that Old GM filed a motion to reject it on November 16, 2009 that is presently set for hearing on December 16, 2009.

70. Denies the allegations of paragraph 70 thereof; admits and alleges that the Settlement was designated for "reject[ion] later" on June 30, 2009 and that Old GM filed a motion to reject it on November 16, 2009 that is presently set for hearing on December 16, 2009.

71. Denies the allegations of paragraph 71 thereof, except admits and alleges (a) that ARMSPA § 6.6(e) only requires New GM to pay, or reimburse Old GM for, administrative expenses which Old GM incurs after the Closing under Executory Contracts which involve continuing performance by contract counterparties and which have not yet been rejected or identified for immediate rejection (for example, rent under a lease for premises which have not yet been, but ultimately will be, vacated); (b) that this provision did not require New GM to pay, or reimburse Old GM for, prepetition obligations which Old GM itself does not have a current obligation to pay except as may be ultimately adjudicated through the claims process and, ultimately, a Plan of Reorganization.; (c) that Old GM at all times since the Closing has not had any obligation to make payments under the Settlement to plaintiffs or their counsel because the Class Action and the Final Judgment approving the Settlement involve prepetition obligations and have been, and remain, stayed pursuant to section 362 of the Bankruptcy Code; and (d) that the Settlement's alleged status as a "Deferred Executory Contract" therefore has not caused, and cannot cause, New GM to assume any liability whatsoever under the Settlement.

72. Denies the allegations of paragraph 72 thereof, except admits and alleges (a) that ARMSPA § 6.6(e) only requires New GM to pay, or reimburse Old GM for, administrative expenses which Old GM incurs after the Closing under Executory Contracts which involve

continuing performance by contract counterparties and which have not yet been rejected or identified for immediate rejection (for example, rent under a lease for premises which have not yet been, but ultimately will be, vacated); (b) that this provision did not require New GM to pay, or reimburse Old GM for, prepetition obligations which Old GM itself does not have a current obligation to pay except as may be ultimately adjudicated through the claims process and, ultimately, a Plan of Reorganization.; (c) that Old GM at all times since the Closing has not had any obligation to make payments under the Settlement to plaintiffs or their counsel because the Class Action and the Final Judgment approving the Settlement involve prepetition obligations and have been, and remain, stayed pursuant to section 362 of the Bankruptcy Code; and (d) that the Settlement's alleged status as a "Deferred Executory Contract" therefore has not caused, and cannot cause, New GM to assume any liability whatsoever under the Settlement.

73. Denies the allegations of paragraph 73 thereof; admits and alleges that plaintiffs' claim of intended third-party beneficiary status and all of their claims based upon the ARMSPA are barred by section 9.11 of the ARMSPA.

AS AND FOR ITS ADDITIONAL DEFENSES, NEW GM ALLEGES

First (Failure To State a Claim Upon Which Relief Can Be Granted)

74. The First Amended Complaint fails to state a claim upon which relief can be granted.

Second (Lack of Standing)

75. Plaintiffs in this non-class action lack standing to assert claims on behalf of any current or former Saturn owners or lessees who are not parties to this case.

Third (Old GM's Failure To Assume the Settlement Agreement)

76. In order for New GM to have any liability under the Settlement, Old GM first would have to assume the Class Action Settlement and assign it to New GM, which Old GM has not done; instead, Old GM has filed a motion to reject the Settlement under Section 365 of the Bankruptcy Code.

Fourth (Plaintiffs' Claims Are Barred by Sale Approval Order)

77. All of plaintiffs' claims in this case are barred by the Sale Approval Order, including without limitation paragraphs 8 and 47 thereof.

Fifth (Plaintiffs' Claims Are Barred by ARMSPA § 9.11)

78. Plaintiffs allege, and premise all of their claims on the allegation that, they are intended third-party beneficiaries of the ARMSPA. Section 9.11 of the ARMSPA, however, provides in substance that it does not confer any rights or benefits on any non-party to the agreement that the ARMSPA does not designate as an express third-party beneficiary. Because the ARMSPA does not designate plaintiffs or class members as express third-party beneficiaries, and because plaintiffs and class members are not parties to the ARMSPA, they have no right to make any claim against New GM under ARMSPA § 2.3(a)(vii)(A) or any other provision of the ARMSPA.

AS AND FOR ITS COUNTERCLAIMS HEREIN, NEW GM ALLEGES AS FOLLOWS

79. Contemnors and counterdefendants Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Allen, Stanley Ozarowski and Donna Santi are the plaintiffs in this case. Contemnors and counterdefendants LakinChapman LLC, Robert W. Schmieder II and Mark L. Brown are attorneys who commenced this proceeding in state court in Delaware on plaintiffs' behalf and have appeared on their behalf in this Court. New GM adds these attorneys as parties defendant on its counterclaims pursuant to Rule 13(h), Fed.R.Civ.P.

80. At all relevant times, contemnors and counterdefendants, and each of them, have been aware of the ARMSPA and Sale Approval Order and, specifically, (a) the provisions defining Assumed and Retained Liabilities and (b) the provisions permanently enjoining all persons from commencing or prosecuting litigation to enforce against New GM the pre-petition liabilities of MLC other than Assumed Liabilities. Specifically, Messrs. Schmieder and Brown and the LakinChapman firm, as attorneys for and authorized agents of the plaintiffs, received from New GM's counsel a letter dated September 10, 2009 (Exhibit A hereto) advising them of the pertinent provisions of the ARMSPA and Sale Approval Order and demanding that they

immediately discontinue prosecution of this case, which was then pending in the Chancery Court of the State of Delaware. Moreover, counsel for New GM in its filings in the Chancery Court, in the United States Bankruptcy Court for the District of Delaware and in this Court repeatedly has advised contemnors and counterdefendants that their commencement and prosecution of this case violates the Sale Approval Order. In addition, upon being advised by plaintiffs' counsel of the intent to seek a temporary restraining order from this Court, counsel for GM directed a second letter to Mr. Brown dated November 12, 2009 (Exhibit B hereto) advising him and his firm again that continued prosecution of this action, including the threatened TRO proceeding, violated the injunctive provisions of the Sale Approval Order.

81. Notwithstanding notice of the pertinent provisions of the ARMSPA and Sale Approval Order, contemnors and counterdefendants, and each of them, have failed and refused willfully to discontinue prosecution of this case, and in doing so have engaged and are continuing to engage in willful violations of the permanent injunctive provisions of the Sale Approval Order, all of which misconduct is punishable, and should be punished, as a civil contempt.

FIRST COUNTERCLAIM FOR RELIEF (Declaratory Judgment; Permanent Injunction)

82. New GM incorporates by reference its admissions, allegations and denials set forth in paragraphs 1 through 81 *supra*.

83. New GM has suffered and is continuing to suffer irreparable injury as the result of contemnors' and counterdefendants' continuing willful violation of the Sale Approval Order. To remedy this injury, New GM is entitled to (a) a declaration that New GM has no liability or responsibility whatsoever to contemnors and counterdefendants or to class members on account of the Class Action Settlement which is the subject of plaintiffs' complaint and (b) a permanent injunction directing contemnors and counterdefendants and class members to take no further action to assert or prosecute any claims arising out of the Class Action Settlement against New GM.

SECOND COUNTERCLAIM FOR RELIEF (Money Damages for Contempt)

84. New GM incorporates by reference its admissions, allegations and denials set forth in paragraphs 1 through 83 *supra*.

85. As a proximate result of contemnors' and counterdefendants' continuing willful violations of the Sale Approval Order New GM has suffered monetary damages, including but not limited to its costs and attorneys fees incurred in defending this case, and New GM will continue to suffer monetary damages in an amount not yet determined as long as contemnors and counterdefendants are not enjoined and restrained from further prosecuting this case in violation of the Sale Approval Order.

WHEREFORE, NEW GM PRAYS FOR JUDGMENT AS FOLLOWS:

A. That plaintiffs take nothing by their complaint and that it be dismissed with prejudice with costs to New GM;

B. That the Court enter judgment on New GM's counterclaims (1) declaring that New GM has not assumed responsibility for the Class Action Settlement and has no liability or responsibility whatsoever to contemnors and counterdefendants or to class members for or on account of the Class Action Settlement, (2) permanently enjoining and restraining contemnors and counterdefendants, and each of them, as well as class members, from taking any further action to assert or prosecute any claims arising out of the Class Action Settlement against New GM, and (3) awarding GM its reasonable attorneys fees and costs incurred in defending this proceeding in an amount according to proof; and

C. For such other and further relief as the Court deems just and proper.

New York, New York
December 11, 2009

*[s]*________________________

Gregory R. Oxford
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Attorneys for General Motors LLC

EXHIBIT A

LAW FIRM OF
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VIA FACSIMILE [(618) 254-0193] AND U.S. MAIL

September 10, 2009

Robert W. Schmieder II
Mark L. Brown
LakinChapman LLC
300 Evans Avenue, Suite 229
Wood River, Illinois 62095-0229

Re: Castillo et al v. General Motors Co. (Delaware Chancery Court)

Dear Rob and Mark:

I represent General Motors Company ("New GM") in connection with the referenced Action.

As you know, New GM acquired substantially all of the assets of General Motors Corporation, now known as "Motors Liquidation Company" ("MLC"), on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). *See In re General Motors Corp.*, 407 B.R. 463 (Bankr.S.D.N.Y.2009) ("Sale Opinion") (approving sale transaction). In acquiring these assets, New GM, with specific limited exceptions, did not assume MLC's liabilities.

New GM's sole responsibilities for MLC's liabilities are set forth in the Bankruptcy Court's "Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., etc.,[1]; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (iii) Granting Related Relief," entered on July 5, 2009 (the "Sale Approval Order"), which is a final binding order.[2]

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[1] New GM was formerly named NGMCO, Inc.

[2] *See* http://docs.motorsliquidationdocket.com/pdflib/2968_order.pdf.

Your assertion in the Action that New GM has assumed liability under the Final Judgment in Castillo v. General Motors Corp., No. 2-07-CV-02142 WBS GGH, United States District Court for the Eastern District of California, is simply incorrect. Your clients are judgment creditors of MLC as the result of a negotiated settlement, approved by the District Court, in a class action which asserted multifarious claims against MLC under state statutes and for alleged breach of express and implied warranties and claimed "unjust enrichment." Under the terms of the settlement, which MLC accepted in order to avoid the costs and uncertainties of litigation, MLC did not admit any liability whatsoever. As the Final Judgment itself provides (¶ 12): "Neither this Judgment nor the Agreement (nor any document referred to herein or any action taken to carry out this Final Judgment) is, may be construed as, or may be used as an admission by Defendant of the validity of any claim, of actual or potential fault, wrongdoing or liability whatsoever." *See also* Stipulation of Settlement, ¶ 5 ("[MLC] expressly denies any wrongdoing and does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it in the Action, and [MLC] denies that plaintiffs or any Class Members have suffered damage or were harmed by the conduct alleged").

Still less did MLC admit any liability which would fall within the definition of "Assumed Liabilities" in the "Amended and Restated Master Sale and Purchase Agreement" ("ARMSPA") which the Bankruptcy Court approved. "Assumed Liabilities" in this context includes only liabilities "arising under express written warranties … specifically identified as warranties and delivered in connection with the sale of new … vehicles…." ARMSPA, ¶ 2.3(a)(vii)(A). This definition clearly does not include liability under the negotiated settlement stipulation and judgment which both expressly disclaim any underlying warranty (or other) liability.

Thus, New GM did not assume any liability under the Final Judgment. As a result, your filing of the Action violates the injunctive provisions of the Sale Approval Order, which unambiguously state that

> "all persons and entities, including, but not limited to . . . litigation claimants and [others] holding liens, claims and encumbrances, and other interest of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability … ***are forever barred, estopped, and permanently enjoined*** … from asserting against [New GM] … such persons' or entities' [rights or claims], including rights or claims based on any successor or transferee liability." Sale Approval Order, ¶ 8 (emphasis added).

And, even more specifically, the Sale Approval Order further provides as follows:

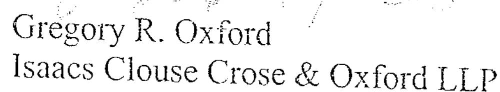
"Effective upon the Closing …all persons and entities ***are forever prohibited and enjoined*** from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial … proceeding against [new GM] …with respect to any (i) claim against the Debtors other than Assumed Liabilities…. including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser…, (b) ***enforcing … any judgment against the Debtors as against [New GM]***…, [or] (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order…." Sale Approval Order, ¶ 47 (emphasis added).

See also id., ¶ 46 ("Except for the Assumed Liabilities expressly set forth in the [ARMSPA] … the Purchaser … shall [not] have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against the Debtors … prior to the Closing Date…. Without limiting the foregoing, [New GM] shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de fact merger or continuity … and products … liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."); *id.*, ¶ 52 (Sale Approval Order "effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated….").

Finally, apart from the lack of merit in your assertion that New GM assumed MLC's liabilities under the Final Judgment, the Delaware Chancery Court lacks jurisdiction of the Action and has no authority to entertain your attempted collateral attack on the scope of "Assumed Liabilities" which are defined by an order issued by a different court in a proceeding which remains pending. Specifically, the Bankruptcy Court in the Sale Approval Order retained "***exclusive jurisdiction to*** enforce and implement the terms and provision of [the Sale Approval] Order [and] the [ARMSPA]…, in all respects, including, but not limited to, retaining jurisdiction to … (c) resolve any disputes arising under or related to the [ARMSPA], except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) ***protect [New GM] against any of the [liabilities that it did not expressly assume under the ARMSPA***] or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased assets…." *Id.*, ¶ 71 (emphasis added). The Chancery Court therefore lacks jurisdiction of your prayer for a declaratory judgment misinterpreting the Sale Approval Order's definition of "Assumed Liabilities" to include liability under the Final Judgment.

For this reason, and because your filing and threatened continuation of the Action directly affronts the final and binding permanent injunction incorporated in the Sale Approval Order (specifically in paragraphs 8 and 47), General Motors Company hereby demands that you and your clients immediately discontinue the Action. Absent prompt compliance, General Motors Company will be forced to take the appropriate steps to enforce the Sale Approval Order, recover from you and your clients all of its costs, expenses and attorney's fees incurred by reason of the improperly filed Action, and seek other appropriate remedies.

Very truly yours,



Gregory R. Oxford
Isaacs Clouse Crose & Oxford LLP

cc: Via facsimile [(302) 254-5383]
and U.S. Mail:

Ian Connor Bifferato
David W. deBruin
Kevin G. Collins
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EXHIBIT B

LAW FIRM OF
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VIA FACSIMILE AND ELECTRONIC MAIL

November 12, 2009

Mark L. Brown
LakinChapman LLC
300 Evans Avenue, Suite 229
Wood River, Illinois 62095-0229

Re: Castillo et al v. General Motors Co. (Declaratory Relief Action)

Dear Mark:

As you know, I represent General Motors, LLC ("GM"), formerly known as General Motors Company, in the above-referenced Action. This will respond to your letter of November 11, which I received late yesterday afternoon. With all respect, GM disputes virtually every statement in your letter.

First, and most obviously, GM is not, and never has been, a party to plaintiffs' class action against Motors Liquidation Company, formerly known as General Motors Corporation, in the United States District Court for the Eastern District of California (the "Class Action"), and GM has not assumed any liability whatsoever for the settlement which MLC negotiated in that case. Your claim that I am "aware from the Complaint currently pending before the Bankruptcy Court" that GM "has assumed the liability of its predecessor, General Motors Corp., with respect to the California judgment" ignores the plain language of the Master Sale and Purchase Agreement and the Sale Approval Order, as well as GM's pending motion to dismiss the subject complaint on the precise ground that GM did not assume this liability.

Second, because GM is not a party to the Class Action and class members are not parties to the above-referenced action, there is no ethical prohibition which restricts its communications with class members in that case. Like any normal business, GM is entitled to communicate with customers and to take whatever customer satisfaction measures it deems appropriate. The mere facts that seven of your individual clients have sued GM based on the claim that GM has assumed the Class Action settlement and that GM has hired lawyers to defeat your meritless suit hardly precludes GM from

communicating with customers who presently are not parties to any pending action against GM.

Third, the central premise of your letter and the accompanying draft motion that GM's new special policy is intended to persuade class members to compromise their claims against MLC, or against GM if they have any such claim (which they don't), is simply false. To accept the benefits of the special policy, Saturn owners are not required to execute a release or surrender any of their rights against MLC under the Class Action settlement – or any claimed rights against GM for that matter. In substance, therefore, Saturn owners have simply been given an additional choice which is not inconsistent in any way with whatever rights they may have in the future pursuant to the terms of the Class Action settlement.

Fourth, GM rejects your claim that any aspect of Special Reimbursement Policy #09280 is misleading.

Finally, as you previously have been advised in my letter of September 10, 2009, your continued prosecution of this action, including the threatened TRO proceeding, violate the clear injunctive provisions of the Sale Approval Order and GM intends to hold your clients and your firm accountable for its attorneys fees and costs in resisting same.

Very truly yours,

Gregory R. Oxford
Isaacs Clouse Crose & Oxford LLP