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Counsel for Buehler Motor GMBH, et al.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
: :
GENERAL MOTORS CORP., *et al.*, : Case No. 09-50026 (REG)
: (Jointly Administered)
Debtors. :
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OBJECTION OF BUEHLER MOTOR GMBH TO THE PROPOSED CURE AMOUNT SET FORTH IN THE NOTICE OF (I) DEBTORS’ INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (II) CURE AMOUNTS RELATED THERETO

Buehler Motor GMBH (“Buehler”), by and through its undersigned counsel hereby files this objection (the “Contract Objection”) to the proposed Assumable Executory Contracts¹ and Cure Amounts set forth in the Notice of (I) Debtors’ Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Amounts Related Thereto (the “Assumption and Assignment Notice”). Buehler asserts this Contract Objection because the Assumption and Assignment Notice does not accurately state the Cure Amount due to Buehler.

In support of its Contract Objection, Buehler respectfully states as follows:

¹ Any capitalized term not herein defined has the meaning ascribed to it in the Sale Order (as defined below).

Background

1. On June 1, 2009 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

2. The Debtors are parties to a proposed Master Sale and Purchase Agreement, dated June 1, 2009, with Vehicle Acquisition Holdings LLC (the “Purchaser”), a purchaser sponsored by the United States Department of the Treasury, which contemplates the sale of substantially all of the Debtors’ assets to the Purchaser.

3. On June 1, 2009, the Bankruptcy Court entered the Interim Order Pursuant to 11 U.S.C. §§ 105, 363, and 364 Authorizing Debtors to (I) Pay Prepetition Claims of Certain Essential Suppliers, Vendors, and Service Providers, (II) Continue Troubled Supplier Assistance Program, and (III) Continue Participation in the United States Treasury Auto Supplier Support Program (Docket No. 175) (the “Interim Essential Supplier Order”).

4. On June 2, 2009, the Bankruptcy Court entered the Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 (I) Approving Procedures for Sale of Debtors’ Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; (II) Scheduling Bid Deadline and Sale Hearing Date; (III) Establishing Assumption and Assignment Procedures; and (IV) Fixing Notice Procedures and Approving Form of Notice (Docket No. 274) (the “Sale Order”).

5. Buehler is a non-debtor counterparty to certain Assumable Executory Contracts proposed to be assumed and assigned, and the Assumption and Assignment Schedule provides

that the Cure Amount owing to Buehler pursuant to the Assumable Executory Contracts is \$242,943.62.

6. Buehler, a German-based supplier, did not receive the Assignment and Assumption Notice until June 10, 2009. Counsel did not learn of the Assumption and Assignment Notice until the afternoon of June 12, 2009. Furthermore, a German holiday on June 11, 2009 and the associated holiday weekend along with the time differential between the United States and Germany further exacerbated Buehler's inability to confirm whether the proposed Cure Amount was sufficient to cure all defaults under the Assumable Executory Contracts by the original deadline.

7. Counsel for the Debtors agreed to an extension through June 20, 2009 for Buehler to file an objection to the proposed Cure Amount.

8. According to Buehler's records and as shown on Exhibit "A" attached hereto, the Debtors are required to pay approximately \$525,306.00 to cure amounts outstanding under the Assumable Executory Contracts.

9. Buehler has both German and United States based operations and issues invoices in both Euros and U.S. Dollars. The conversion rate complicates the process of matching up amounts due under each Assumable Executory Contract and makes it difficult to determine where exact discrepancies lie between the proposed Cure Amount and the amount Buehler's records show is required to cure amounts outstanding under the Assumable Executory Contracts. Moreover, the difference in currency may be one reason for the discrepancy between the proposed Cure Amount and the amount owing to Buehler under the Assumable Executory Contracts as it appears the Debtors may not have converted amounts shown due in Euros to U.S. Dollars.

10. The Debtors do not appear to be distinguishing between Assumable Executory Contracts with Buehler (the German-based operation) and its wholly owned subsidiary Buehler Motor, Inc. (the U.S.-based operation), but rather the Debtors have listed all Assumable Executory Contracts under the Buehler Motor GMBH parent entity. In comparing the listed Assumable Executory Contracts and the proposed Cure Amount, it appears to Buehler that the Debtors may intend for the proposed Cure Amount to cover both Buehler and Buehler Motor, Inc.

11. Buehler has been advised by Debtors' representatives to expect to receive the Trade Agreement² today notifying Buehler of its status as an essential vendor under the Interim Essential Supplier Order. Buehler plans to negotiate with the Debtors the terms of the Trade Agreement, including the amount to be paid to Buehler as an essential vendor. Buehler recognizes that, to a certain extent, any payments made to it as an essential vendor will be treated as part of the Cure Amount under the terms of the Assumption and Assignment Procedures.

12. Although initial discussions between Buehler and the Debtors have commenced, there has been insufficient time to complete such discussions to permit the parties to achieve a resolution. Thus, Buehler must file this Contract Objection to preserve its rights because at the current time, the proposed Cure Amount does not appear to fully and finally compensate Buehler and cure all defaults under the applicable agreements and, as a result, the Debtors have failed to show that the proposed Cure comports with section 365(b) of the Bankruptcy Code.

Objection

13. Pursuant to 11 U.S.C. § 365(b)(1), the Buehler Assumable Executory Contracts cannot be assumed by the Debtors and assigned to the Purchaser unless the Debtors cure all defaults under the Assumable Executory Contracts. To assume an executory contract, a debtor

² This term has the meaning ascribed to it in the Interim Essential Supplier Order.

must satisfy the “statutory conditions designed to make the non-debtor contracting party whole,” one such condition being curing any defaults under such executory contract prior to assumption. In re Wireless Data, Inc., 547 F.3d 484, 489 (2d Cir. 2008). Thus, whether a debtor may assume a contract “depends on the debtor’s ability to cure (or provide adequate assurance that it will promptly cure) all pre-petition defaults arising under that contract.” Id. at 494. The proposed Cure Amount asserted by the Debtors in the Assumption and Assignment Notice is significantly less than the amount reflected in the records of Buehler that will be required to satisfy amounts outstanding under the Assumable Executory Contracts.

14. Moreover, the Assumable Executory Contracts cannot be assumed by the Debtors and assigned to the Purchaser unless the Debtors provide adequate assurance of future performance pursuant to 11 U.S.C. § 365(b)(1)(C). The Debtors should confirm that any postpetition amounts owing under the Assumable Executory Contracts will continue to be timely paid by Debtors and/or the Purchaser or another bidder.

15. Buehler notes that, subject to the reservation of its rights below, it intends to negotiate with the Debtors to resolve any outstanding issues with respect to the identified Assumable Executory Contracts and the proposed Cure Amount associated therewith prior to a hearing on this Contract Objection.

Reservation of Rights

16. Buehler hereby reserves all of its rights and available remedies under applicable law, including without limitation, its right to amend this Contract Objection to include any additional facts as may be determined by further investigation of the Assumable Executory Contracts. Further, in the absence of full and complete cure of all obligations (prepetition and postpetition) arising under all applicable agreements between Buehler and the Debtors, Buehler

reserves any and all rights to assert any claim in the Bankruptcy Cases of the Debtors including any claim under sections 503(b)(9) and 546 of the Bankruptcy Code or under applicable state law.

Relief Requested

17. Buehler requests that the Court condition the assumption and assignment of the Assumable Executory Contracts upon payment of the full amounts owed by the Debtors under the Assumable Executory Contracts and confirmation by the Debtors that any postpetition amounts owing under the Assumable Executory Contracts will be timely paid by the Debtors and/or the Purchaser or another bidder.

Dated: New York, New York
June 19, 2009

Respectfully submitted,

ALSTON & BIRD LLP

/s/ J. William Boone

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EXHIBIT A

**BUEHLER SCHEDULE OF AMOUNTS OUTSTANDING UNDER ASSUMABLE
EXECUTORY CONTRACTS**

exchange rate 1.4154 USD for 1 Euro as of June 1, 2009

Shipments prior to 04-17-09		Order Details		Deliveries		Payment received		Balance Due									
Entity	GM PO Number/Contract ID	GM PO Issue Date	GM Part Number	Buehler p/n	Z Number	Quantity	Price	Currency	Total	Date of ship	Invoice No	Quantity Shipped	Value	Converted to USD	Payment received	Date Due	Balance Due
BMG Germany	N1DE9	5/16/2008	25875050AX	DP000141	BP6J	2	€ 2,520.00	EUR	€ 5,040.00	5/16/2008	165240	2	€ 5,040.00	\$7,133.62		\$7,133.62	
BMG Germany	N1DE9	6/6/2008	25875050B	DP000141	BP6J	2	€ 2,520.00	EUR	€ 5,040.00	6/6/2008	165515	2	€ 5,040.00	\$7,133.62		\$7,133.62	
BMG Germany	N1DE9	5/11/2008	1X279159A	DP000141	BP6J	4	€ 195.00	EUR	€ 780.00	3/20/2009	168924	4	€ 780.00	\$1,104.01		\$24.12	
BMG Germany	N1DE9	8/20/2008	1X279159B	DP000141	BP6J	2	€ 195.00	EUR	€ 390.00	8/20/2008	166444	2	€ 390.00	\$552.01		\$552.01	
BMG Germany	N1DE9	8/21/2008	1X279159B	DP000141	BP6J	13	€ 195.00	EUR	€ 2,535.00	8/21/2008	166459	13	€ 2,535.00	\$3,588.04		\$3,588.04	
BMG Germany	N1DE9	9/24/2008	1X279159B	DP000141	BP6J	6	€ 195.00	EUR	€ 1,170.00	9/17/2008	166914	6	€ 1,170.00	\$1,656.02		\$1,656.02	
BMG Germany	N1L97 002	2/17/2009	1X279159B	DP000141	BP6J	2	€ 552.52	EUR	€ 1,105.04	4/3/2009	168091	2	€ 1,105.04	\$782.04		\$782.04	
BMG Germany	RX1DB-000	2/20/2009	1X279159B	Setup	BP6J	7	€ 276.26	EUR	€ 1,933.82	4/16/2009	169191	7	€ 1,933.82	\$2,737.13		\$2,737.13	
BMG Germany	RX1DB-000	2/20/2009	PCB-COAT	Setup	BP6J	1	€ 450.00	EUR	€ 450.00	4/16/2009	169200	1	€ 450.00	\$636.93		\$636.93	
BMG Germany	N1DE9	1/8/2009	TOOLING	Tax for Tooling	BP6J	1	€ 11,501.27	EUR	€ 11,501.27	9/29/2008	166955	1	€ 11,501.27	\$16,278.90		\$16,278.90	
Shipments from April 17 but before June 1																	
Entity	GM PO Number/Contract ID	GM PO Issue Date	GM Part Number	Buehler p/n	Z Number	Quantity	Price	Currency	Total	Date of ship	Invoice No	Quantity Shipped	Value	Converted to USD	Payment received	Date Due	Balance Due
BMG Germany	N1L97 003	4/17/2009	1X279159B	DP000141	BP6J	3	€ 276.26	EUR	€ 828.78	5/14/2009	169285	2	€ 828.78	\$1,173.06		\$1,173.06	
BMG Germany	N1L97 002	2/17/2009	25875090A	12402100801	BP6X	2	€ 220.00	EUR	€ 440.00	5/14/2009	169553	2	€ 440.00	\$622.78		\$622.78	
BMI USA	N1QD1-000	3/11/2009	20822508A	E1240214274	BPX6	1	\$125.00	USD	\$125.00	5/14/2009	155204	1	\$125.00	\$125.00		\$125.00	
BMI USA	N1QD1-000	5/17/2009	25953015A	E1240214275	BPX6	1	\$150.00	USD	\$150.00	5/14/2009	155205	1	\$150.00	\$150.00		\$150.00	
BMI USA	N1R31	3/11/2009	25968559B	DP000141/001	BPX6	2	€ 1,447.66	EUR	€ 2,049.02	5/15/2009	155214	2	€ 2,049.02	\$2,049.02		\$2,049.02	
BMI USA	N1NLK	1/27/2009	25968548B	DP000141/002	BPX6	4	€ 2,895.32	EUR	€ 11,181.28	5/15/2009	155215	4	€ 2,895.32	\$4,097.28		\$4,097.28	
BMI USA	N1QD1-000	3/11/2009	20822508A	E1240214274	BPX6	6	\$750.00	USD	\$4,500.00	5/21/2009	155257	6	\$750.00	\$750.00		\$750.00	
BMI USA	N1QD1-000	3/11/2009	25953015A	E1240214275	BPX6	6	\$900.00	USD	\$5,400.00	5/21/2009	155258	6	\$900.00	\$900.00		\$900.00	
BMI USA	N1NLK-003	5/18/2009	25968548B	DP000141/002	BPX6	2	€ 673.83	EUR	€ 1,347.66	5/22/2009	155269	2	€ 1,347.66	\$1,907.48		\$1,907.48	
BMI USA	N1SAE-000	3/20/2009	1X284887A	DP000141/003	BPX6	2	€ 1,397.66	EUR	€ 2,795.32	5/22/2009	155270	2	€ 2,795.32	\$2,190.56		\$2,190.56	
BMI USA	N1NLK-005	3/20/2009	25968559B	DP000141/001	BPX6	2	€ 678.83	EUR	€ 1,357.66	5/22/2009	155271	2	€ 1,357.66	\$1,921.63		\$1,921.63	
BMI USA	N1QD1-000	3/11/2009	20822508A	E1240214274	BPX6	12	\$1,500.00	USD	\$18,000.00	5/26/2009	155277	12	\$1,500.00	\$1,500.00		\$1,500.00	
BMI USA	N1QD1-000	3/11/2009	25953015A	E1240214275	BPX6	24	\$3,600.00	USD	\$86,400.00	5/26/2009	155278	24	\$3,600.00	\$3,600.00		\$3,600.00	
BMI USA	N1SAE-000	5/12/2009	1X284887A	DP000141/003	BPX6	2	€ 698.83	EUR	€ 1,397.66	5/29/2009	155293	2	€ 1,397.66	\$1,978.25		\$1,978.25	
BMI USA	N1NLK-005	3/20/2009	25968559B	DP000141/001	BPX6	2	€ 673.83	EUR	€ 1,347.66	5/29/2009	155294	2	€ 1,347.66	\$1,907.48		\$1,907.48	
BMI USA	N1NLK-004	5/18/2009	25968548B	DP000141/002	BPX6	2	€ 673.83	EUR	€ 1,347.66	5/29/2009	155295	2	€ 1,347.66	\$1,907.48		\$1,907.48	
Total																	
														\$26,780		\$26,780	

Shipments after June 1		Order Details		Deliveries		Payment received		Balance Due									
Entity	GM PO Number/Cont	GM PO Issue Date	GM Part Number	Buehler p/n	Z Number	Quantity	Price	Currency	Total	Date of ship	Invoice No	Quantity Shipped	Value	Converted to USD	Payment received	Date Due	Balance Due
BMI USA	N1SAE-000	5/12/2009	1X284887A	12402200200	BPX6	2	€ 698.83	EUR	€ 1,397.66	6/6/2009	155325	2	€ 1,397.66	\$1,978.25		\$1,978.25	
BMI USA	N1NLK-005	3/20/2009	25968559B	12402200300	BPX6	2	€ 673.83	EUR	€ 1,347.66	6/6/2009	155326	2	€ 1,347.66	\$1,907.48		\$1,907.48	
BMI USA	N1NLK-004	5/18/2009	25968548B	12402200200	BPX6	2	€ 673.83	EUR	€ 1,347.66	6/6/2009	155324	2	€ 1,347.66	\$1,907.48		\$1,907.48	
BMI USA	N1SAE-000	5/12/2009	1X284887A	12402200200	BPX6	2	€ 698.83	EUR	€ 1,397.66	6/11/2009	155359	2	€ 1,397.66	\$1,978.25		\$1,978.25	
BMI USA	N1NLK-005	3/20/2009	25968559B	12402200300	BPX6	2	€ 673.83	EUR	€ 1,347.66	6/11/2009	155360	2	€ 1,347.66	\$1,907.48		\$1,907.48	
Total																	
														\$17,586		\$17,586	

Open orders not Shipped		Order Details		Deliveries		Payment received		Balance Due									
Entity	GM PO Number/Cont	GM PO Issue Date	GM Part Number	Buehler p/n	Z Number	Quantity	Price	Currency	Total	Date of ship	Invoice No	Quantity Shipped	Value	Converted to USD	Payment received	Date Due	Balance Due
BMI USA	N1NLK-004	5/18/2009	25968548B	12402200200	BPX6	70	€ 673.83	EUR	€ 47,168.10				€ 47,168.10	\$66,762		\$66,762	
BMI USA	N1NLK-000	5/18/2009	TOOLING	TOOLING	BPX6	1	€ 127,649.00	EUR	€ 127,649.00				€ 127,649.00	\$180,674.39		\$180,674.39	
BMI USA	N1SAE-000	5/12/2009	1X284887A	12402200200	BPX6	64	€ 698.83	EUR	€ 44,725.12				€ 44,725.12	\$63,304		\$63,304	
BMI USA	N1SEU-000	5/18/2009	25875090A	12402200200	BPX6	4	€ 220.00	EUR	€ 880.00				€ 880.00	\$1,246		\$1,246	
BMI USA	N1NLK-005	3/20/2009	25968559B	12402200300	BPX6	73	€ 673.83	EUR	€ 49,189.59				€ 49,189.59	\$69,622.95		\$69,622.95	
BMI USA	N1NLK-005	3/20/2009	TOOLING	TOOLING	BPX6	1	€ 29,809.00	EUR	€ 29,809.00				€ 29,809.00	\$42,191.66		\$42,191.66	
BMI USA	N1QD1-000	3/11/2009	TOOLING	TOOLING	BPX6	1	\$3,500.00	USD	\$3,500.00				\$3,500.00	\$2,500		\$2,500	
BMI USA	N1QD1-000	3/11/2009	TOOLING	TOOLING	BPX6	1	\$2,500.00	USD	\$2,500.00				\$2,500.00	\$2,500		\$2,500	
BMI USA	N1QD1-000	3/11/2009	20822508A	E1240214274	BPX6	30	\$125.00	USD	\$3,750.00				\$3,750.00	\$3,750		\$3,750	
BMI USA	N1QD1-000	3/11/2009	25953015A	E1240214275	BPX6	18	\$150.00	USD	\$2,700.00				\$2,700.00	\$2,700		\$2,700	
BMI USA	N1L97 003	4/17/2009	1X279159B	DP000141	BP6J	26	€ 276.26	EUR	€ 7,182.76				€ 7,182.76	\$10,166.48		\$10,166.48	
Total																	
														\$446,417		\$446,417	

Grand Total USD \$525,306