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Income Fund, (ii) Virtus Multisector Short Term
Bond Fund, (iii) Virtus Senior Floating Rate Fund,
(iv) Phoenix Edge Series Fund Phoenix Multi
Sector Short Term Bond Series, and (v) Phoenix
Edge SRS-Multi-Sector Fixed Income Series*

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

In re:

MOTORS LIQUIDATION COMPANY, *et. al.*

MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST, by and through
the Wilmington Trust Company, solely in its
capacity as Trust Administrator and Trustee,

Plaintiff,

v.

JP MORGAN CHASE BANK, N.A., individually
and as Administrative Agent for Various lenders
party to the Term Loan Agreement described
herein, et al.,

Defendants.

Chapter 11 Case

Case No. 09-50026 (REG)

(Jointly Administered)

Adv. Pro. No. 09-00504 (REG)

DEFENDANTS' ANSWER WITH AFFIRMATIVE DEFENSES

Defendants (i) Virtus Multi Sector Fixed Income Fund (“Virtus Fixed Income Fund”), (ii)
Virtus Multisector Short Term Bond Fund (“Virtus Short Term Bond Fund”), (iii) Virtus Senior

Floating Rate Fund (“Virtus Floating Rate Fund”), (iv) Phoenix Edge Series Fund Phoenix Multi Sector Short Term Bond Series (“Phoenix Fund Bond Series”), and (v) Phoenix Edge SRS-Multi-Sector Fixed Income Series (“Phoenix Fixed Income Series”, and collectively, the “Defendants”), by their undersigned attorneys, hereby respond to the First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (iii) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims By Defendants [Docket Entry No. 91] (“Complaint”), filed by Plaintiff Motors Liquidation Company Avoidance Action Trust (“Plaintiff”), and respectfully avers as follows:

1. Paragraph 1 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants admit that Plaintiff purports to bring this action pursuant to Rule 7001 et. Seq. of the Federal Rules of Bankruptcy Procedure to seek relief in accordance with 11 U.S.C. §§ 105, 502, 544, 545, 547, 549, 550, 551, and 1107 and other applicable law, and respectfully refer all questions of law to the appropriate Court.

2. Paragraph 2 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 2 of the Complaint and respectfully refer all questions of law to the appropriate Court.

3. Paragraph 3 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 3 of the Complaint and respectfully refer all questions of law to the appropriate Court.

4. Paragraph 4 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without

sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court. Further, Defendants do not consent to the entry of final orders or judgment by the Bankruptcy Court if it is determined that the Bankruptcy Court does not have jurisdiction to enter a final judgment or order consistent with Article III of the United States Constitution.

5. Paragraph 5 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

6. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and on that basis deny each and every allegation contained therein.

7. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint and on that basis deny each and every allegation contained therein.

8. Paragraph 8 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8 and on that basis deny each and every allegation contained therein, and respectfully refer the Court to the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004(A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting*

Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties, dated June 25, 2009 for an interpretation set forth therein.

9. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and on that basis deny each and every allegation contained therein.

10. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint and on that basis deny each and every allegation contained therein.

11. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and on that basis deny each and every allegation contained therein.

12. Defendants admit that on March 18, 2011, the Bankruptcy Court entered an order confirming the Debtor's Second Amended Joint Chapter 11 Plan. The remainder of paragraph 12 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 12 and on that basis deny each and every remaining allegation contained therein, and respectfully refer the Court to the *Debtors' Second Amended Joint Chapter 11 Plan* for an interpretation of the terms set forth therein.

13. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and on that basis deny each and every allegation contained therein.

14. Paragraph 14 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 14 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

15 - 376. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 15 through 376 of the Complaint and on that basis deny each and every allegation contained therein.

377. Defendants admit that Phoenix Edge Series Fund Phoenix Multi Sector Short Term Bond Series is an entity that received a transfer made under the Term Loan Agreement, and further state that Phoenix Edge Series Fund Phoenix Multi Sector Short Term Bond Series had a contractual obligation to pass such payment through to JP Morgan Chase Bank, N.A. (“JP Morgan Chase”) and as such, it received such payments for the benefit of JP Morgan Chase.

378. Defendants admit that Phoenix Edge SRS-Multi-Sector Fixed Income Series is an entity that received a transfer made under the Term Loan Agreement, and further state that Phoenix Edge SRS-Multi-Sector Fixed Income Series had a contractual obligation to pass such payment through to JP Morgan Chase and as such, it received such payments for the benefit of JP Morgan Chase.

379 – 539. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 379 through 539 of the Complaint and on that basis deny each and every allegation contained therein.

540. Defendants admit Virtus Multi Sector Fixed Income Fund is an entity that received a transfer made under the Term Loan Agreement, but state that Virtus Multi Sector

Fixed Income Fund had a contractual obligation to pass such payment through to JP Morgan Chase and as such, it received such payments for the benefit of JP Morgan Chase.

541. Defendants admit Virtus Multisector Short Term Bond Fund is an entity that received a transfer made under the Term Loan Agreement, and further state that Virtus Multisector Short Term Bond Fund had a contractual obligation to pass such payment through to JP Morgan Chase and as such, it received such payments for the benefit of JP Morgan Chase.

542. Defendants admit Virtus Senior Floating Rate Fund is an entity that received a transfer made under the Term Loan Agreement, and further state that Virtus Senior Floating Rate Fund had a contractual obligation to pass such payment through to JP Morgan Chase and as such, it received such payments for the benefit of JP Morgan Chase.

543 – 569. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 543 through 569 of the Complaint and on that basis deny each and every allegation contained therein.

570. Paragraph 570 of the Complaint does not contain any allegations of fact or law. Therefore, no responsive pleading is necessary.

571. Defendants deny the allegations contained in paragraph 571 of the Complaint, except admits that General Motors Corporation, Saturn Corporation and JPMCB, as Administrative Agent, entered into the Term Loan Agreement and respectfully refers the Court to the Term Loan Agreement for an interpretation of the terms set forth therein.

572. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 572 of the Complaint, except admit that certain lenders extended credit to the Debtors secured by a first-priority lien on certain assets of the Debtors pursuant to the terms of the Term Loan Agreement, and refers to the Term Loan Agreement for the terms set forth therein.

573. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 573 of the Complaint and on that basis deny each and every allegation contained therein.

574. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 574 of the Complaint and on that basis deny each and every allegation contained therein.

575. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 575 of the Complaint and on that basis deny each and every allegation contained therein.

576. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 576 of the Complaint and on that basis deny each and every allegation contained therein.

577. Paragraph 577 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 577 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

578. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 578 of the Complaint and on that basis deny each and every allegation contained therein.

579. Paragraph 579 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in

paragraph 579 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

580. Defendants deny the allegations contained in paragraph 580 of the Complaint, except admits that Plaintiff purported to bring this action to challenge the first-priority lien that secured the loan made under the Term Loan Agreement

581. Defendants deny the allegations contained in paragraph 581 of the Complaint, except admit that two UCC-1 financing statements were filed with the Delaware Secretary of State on November 30, 2006 in connection with the Term Loan Agreement (the “Term Loan UCC Financing Statements”), and refers to the Term Loan UCC Financing Statements for an interpretation of the terms set forth therein.

582. Defendants deny the allegations contained in paragraph 582 of the Complaint, except admit that a UCC-3 financing statement amendment dated October 30, 2008 (the “October 2008 Amendment”) was filed with the Delaware Secretary of State, and refers to the October 2008 Amendment for an interpretation of the terms set forth therein..

583. Paragraph 583 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 583 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

584. Defendants deny the allegations contained in paragraph 584 of the Complaint, except admit that on or about March 1, 2013, the Bankruptcy Court entered a *Decision on Cross Motions for Summary Judgment* (“Decision”) [Adv. Pro. Dkt. No. 71], a *Judgment* (“Judgment”) [Adv. Pro. Dkt. No. 73] and an *Order on Cross Motions for Summary Judgment* (“Order”) [Adv.

Pro. Dkt. No. 72] and refers to the Decision, the Judgment, and the Order for an interpretation of the terms set forth therein.

585. Defendants deny the allegations contained in paragraph 585 of the Complaint, except admit that on or about January 21, 2015, the United States Court of Appeals for the Second Circuit entered a decision (the “Second Circuit Decision”) and refers to the Second Circuit Decision for an interpretation of the terms set forth therein.

**AS AND FOR AN ANSWER
TO THE FIRST CLAIM FOR RELIEF**

586. Paragraph 586 of the Complaint is a mere transitional phrase to which no response is required. To the extent that a response may be required, Defendants repeat, reallege and incorporate herein by reference each of the foregoing paragraphs.

587. Paragraph 587 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 587 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

588. Paragraph 588 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 588 of the Complaint, and respectfully refer all questions of law to the appropriate Court.

589. Paragraph 589 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 589 of the Complaint, and respectfully refer all questions of law to the appropriate Court.

**AS AND FOR AN ANSWER
TO THE SECOND CLAIM FOR RELIEF**

590. Paragraph 590 of the Complaint is a mere transitional phrase to which no response is required. To the extent that a response may be required, Defendants repeat, reallege and incorporate herein by reference each of the foregoing paragraphs.

591. Paragraph 591 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 591 of the Complaint, and respectfully refer all questions of law to the appropriate Court.

592. Paragraph 592 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 592 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

593. Paragraph 593 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 593 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

594. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 594 of the Complaint and on that basis deny each and every allegation contained therein.

595. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 595 of the Complaint and on that basis deny each and every allegation contained therein, except admit that they received certain transfers

pursuant to the terms of the Term Loan Agreement, and further state that they had a contractual obligation to pass such payments through to JP Morgan Chase, and as such they received such payments for the benefit of JP Morgan Chase.

596. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 596 of the Complaint and on that basis deny each and every allegation contained therein.

597. Paragraph 597 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 597 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

598. Paragraph 598 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 598, and respectfully refer all questions of law to the appropriate Court.

599. Paragraph 599 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 599 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

600. Paragraph 600 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 600, and respectfully refer all questions of law to the appropriate Court.

601. Paragraph 601 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 601 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

602. Paragraph 602 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 602 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

603. Paragraph 603 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 603, and respectfully refer all questions of law to the appropriate Court.

**AS AND FOR AN ANSWER
TO THE THIRD CLAIM FOR RELIEF**

604. Paragraph 604 of the Complaint is a mere transitional phrase to which no response is required. To the extent that a response may be required, Defendants repeat, reallege and incorporate herein by reference each of the foregoing paragraphs.

605. Paragraph 605 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 605 of the Complaint, and respectfully refer all questions of law to the appropriate Court.

606. Paragraph 606 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the

allegations contained in paragraph 606 of the Complaint, and respectfully refer all questions of law to the appropriate Court.

607. Paragraph 607 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 607 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

608. Paragraph 608 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 608 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

609. Paragraph 609 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 609 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

610. Paragraph 610 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 610 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

611. Paragraph 611 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without

sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 611 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

612. Paragraph 612 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 612 of the Complaint, and respectfully refer all questions of law to the appropriate Court.

613. Paragraph 613 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 613 of the Complaint, and respectfully refer all questions of law to the appropriate Court.

614. Paragraph 614 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 614 and on that basis deny each and every allegation contained therein, and respectfully refer all questions of law to the appropriate Court.

615. Paragraph 615 of the Complaint contains only legal conclusions or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations contained in paragraph 613 of the Complaint, and respectfully refer all questions of law to the appropriate Court.

**AS AND FOR AN ANSWER
TO THE FOURTH CLAIM FOR RELIEF**

616. Paragraph 616 of the Complaint is a mere transitional phrase to which no response is required. To the extent that a response may be required, Defendants repeat, reallege and incorporate herein by reference each of the foregoing paragraphs.

617. Defendants deny the allegations contained in paragraph 617 of the Complaint.

618. Defendants deny the allegations contained in paragraph 618 of the Complaint.

AFFIRMATIVE DEFENSES

In identifying the defenses set forth below, Defendants do not relieve Plaintiff of proving under the appropriate standard of proof all elements of the claims that Plaintiff alleges.

Defendants do not undertake any burdens that properly rest upon Plaintiff, and do not suggest either that Plaintiff does not bear the burden of proof as to such matters or that such matters are not elements that Plaintiff must establish in order to make out a prima facie case against Defendants. These defenses are set forth cumulatively and in the alternative.

In the event that subsequent legal developments further alter the claims available to the Plaintiff, Defendants hereby raise each and every defense at law, in equity, or otherwise, available under any and all federal and state statutes, laws, rules, regulations or other creations, including common law. Defendants further adopt and incorporate by reference any and all other defenses asserted or to be asserted by any other defendant or party-in-interest to the extent that Defendants are similarly situated and may properly assert such defense.

Defendants reserve and assert all affirmative defenses available under applicable federal or state law, including Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, and reserve the right to assert other defenses, cross-claims, and third party claims when and if they become appropriate in this action.

These defenses are set forth cumulatively and in the alternative.

FIRST AFFIRMATIVE DEFENSE

The Complaint violates Rules 8(a)(2) of the Federal Rules of Civil Procedure, *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) by, *inter alia*, (a) failing to describe each specific transfer and its recipients, and improperly combining

allegations as to all Defendants, (b) pleading numerous background allegations and purported legal standards that are not required for the assertion of the alleged claims, and (c) pleading numerous factual allegations about which Defendants could not possibly have knowledge.

SECOND AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the final adjudication of the claims asserted in the Complaint under *Stern v. Marshall*, 131 S. Ct. 2594 (2011), and its progeny. The asserted claims are not core proceedings and Defendants do not consent to the entry of a final order and judgment by the Bankruptcy Court. Defendants further demand a trial by jury.

THIRD AFFIRMATIVE DEFENSE

The Complaint is barred, in whole and/or in part, because Plaintiff lacks standing and/or capacity to bring any claims against Defendants.

FOURTH AFFIRMATIVE DEFENSE

Even if the Plaintiff is entitled to the return of some or all of the transfers, it is not entitled to interest from the date of each alleged transfer.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

The claims are barred by intervening or superseding events, factors, occurrence, or conditions over which Defendants had no control and any injury or damages to the Plaintiff

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

SEVENTH AFFIRMATIVE DEFENSE

To the extent one or more of the transfers alleged in the Complaint were made, the Complaint is barred by 11 U.S.C. § 550 (b)(1) because Defendants took any such transfer for value, in good faith, and without knowledge of the voidability of the alleged transfers. Such transfers are thus not avoidable or recoverable as against these Defendants under sections 549 and 550 of the Bankruptcy Code.

EIGHTH AFFIRMATIVE DEFENSE

To the extent one or more of the transfers alleged in the Complaint were made, the Complaint is barred by 11 U.S.C. § 550 (b)(2) because Defendants were an immediate or mediate good faith transferee of a transferee who took any such transfer for value, in good faith, and without knowledge of the voidability of the alleged transfers.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole and/or in part, based on the doctrines of laches, waiver and/ or estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is estopped from alleging that any security interest of JP Morgan Chase, as Administrative Agent, was terminated or, in the alternative, the Court should find that the Debtors held any such collateral under the Term Loan Agreement pursuant to a constructive trust.

TWELFTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint against Defendants are barred to the extent that Defendants were a mere conduit with respect to any of the alleged transfers.

THIRTEENTH AFFIRMATIVE DEFENSE

The October 2008 Amendment was filed as the result of a mistake of fact and is therefore not enforceable as against Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

The filing of the October 2008 Amendment was unauthorized, and is therefore not enforceable as against Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

The unauthorized filing of the October 2008 Amendment did not waive Defendants' security interests in certain assets of the Debtors pursuant to the Term Loan Agreement and the Term Loan UCC Financing Statements.

SIXTEENTH AFFIRMATIVE DEFENSE

The alleged transfers are not avoidable as against Defendants or recoverable from Defendants under the single satisfaction rule set forth in Section 550(d) of the Bankruptcy Code and/or under New York law.

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint against Defendants to avoid transfers under 11 U.S.C. § 549 are barred insofar as such transfers were not of property of the estate.

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint against Defendants are barred, in whole or in part, by applicable statutes of limitations.

TWENTIETH AFFIRMATIVE DEFENSE

At the time any of the purported preferential transfers referenced in the Complaint were allegedly made by the Debtors, Defendants did not receive more than they would have received had the Debtors' bankruptcy cases been cases under chapter 7 of the Bankruptcy Code, had such transfers not been made, and had Defendants received payment therein to the extent provided in the provisions of the Bankruptcy Code.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Pursuant to Bankruptcy Code section 547(c)(2), the alleged transfers sought from Defendants in the Complaint were (a) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and Defendants, (b) made in the ordinary course of business or financial affairs of the Debtors and Defendants, and (c) made according to ordinary business terms.

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

The claims asserted in the Complaint against Defendants are barred by the doctrines of recoupment and/or set-off.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The service of process upon Defendants was insufficient.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Claims in the Complaint are barred by the doctrine of mistake, which requires reinstatement of the erroneously discharged security interest.

JURY TRIAL DEMANDED

Defendants demand a trial by jury for all issues so triable.

RESERVATION OF RIGHTS

Defendants expressly reserve the right to amend and/or supplement this Answer, its Affirmative Defenses, and all other pleadings. Defendants also reserve the right to assert all other defenses that may be revealed during the course of discovery or other investigation.

WHEREFORE, Defendants demand judgment against Plaintiff dismissing the Complaint with Prejudice, awarding Defendants' attorneys' fees and costs of suit, and such other relief as the Court deems just and appropriate.

Dated: New York, New York
November 16, 2015

KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP

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