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

|   |   |                         |
|---|---|-------------------------|
| In re:  | : | Chapter 11 Case         |
| MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,   | : | Case No. 09-50026 (REG) |
| Debtors.  | : | (Jointly Administered)  |
| <hr/>   |   |                         |
| MOTORS LIQUIDATION COMPANY AVOIDANCE<br>ACTION TRUST, by and through the Wilmington Trust<br>Company, solely in its capacity as Trust Administrator and<br>Trustee, | : | Adversary Proceeding    |
| Plaintiff,  | : | Case No. 09-00504 (REG) |
| vs.   | : |                         |
| JPMORGAN CHASE BANK, N.A., individually and as<br>Administrative Agent for various lenders party to the Term<br>Loan Agreement described herein, <i>et al.</i> ,    | : |                         |
| Defendants.   | : |                         |

**ANSWER OF DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL  
PRODUCTS INC., LOAN FUNDING XI LLC, AND  
BISMARCK CBNA LOAN FUNDING LLC**

Defendants Citibank N.A., Citigroup Financial Products Inc., Loan Funding XI LLC, and  
Bismarck CBNA Loan Funding LLC (collectively, “Citi”), by their undersigned attorneys, Davis

Polk & Wardwell LLP, hereby answer the Amended Complaint dated May 20, 2015 (the “**Amended Complaint**”) of the Motors Liquidation Company Avoidance Action Trust, by and through the Wilmington Trust Company, solely in its capacity as the trust administrator and trustee (“**Plaintiff**”).

**AS TO THE ALLEGED JURISDICTION AND VENUE**

1. States that the allegations of paragraph 1 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Amended Complaint.

2. States that the allegations of paragraph 2 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Amended Complaint.

3. States that the allegations of paragraph 3 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Amended Complaint.

4. States the allegations of paragraph 4 of the Amended Complaint do not contain any allegations against Citi, making a responsive pleading unnecessary. To the extent a response is required, in accordance with Local Bankruptcy Rule 7012-1, Citi further states that it does 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. States that the allegations of paragraph 5 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Amended Complaint.

**AS TO THE ALLEGED PARTIES**

6. Admits, on information and belief, that Motors Liquidation Company f/k/a General Motors Corporation and certain of its subsidiaries (collectively, the “**Debtors**”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) on June 1, 2009 (the “**Petition Date**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

7. Admits, on information and belief, the allegations of paragraph 7 of the Amended Complaint.

8. States that the allegations of paragraph 8 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Amended Complaint, except admits, on information and belief, that on June 25, 2009, the Court issued 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* (the “**DIP Order**”) and refers to the DIP Order for the terms set forth therein.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Amended Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Amended Complaint.

12. States that the allegations of paragraph 12 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Amended Complaint, except admits, on information and belief, that the Court entered an order (the “**Confirmation Order**”) confirming the *Debtors’ Second Amended Joint Chapter 11 Plan* (the “**Plan**”) and refers to the Plan for the terms set forth therein.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Amended Complaint.

14. States that the allegations of paragraph 14 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Amended Complaint and refers to the DIP Order, the Confirmation Order, the Plan and the Trust Agreement (as defined in the Amended Complaint) for the terms set forth therein.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of each of paragraphs 15 through 47 of the Amended Complaint.

48. States that the allegations of paragraph 48 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, denies the allegations contained in paragraph 48, except admits that Bismarck CBNA Loan Funding LLC received funds under the Term Loan Agreement (as defined in the Amended Complaint).

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of each of paragraphs 49 through 93 of the Amended Complaint.

94. States that the allegations of paragraph 94 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, denies the allegations contained in paragraph 94, except admits that Citibank, N.A. received funds under the Term Loan Agreement.

95. States that the allegations of paragraph 95 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, denies the allegations contained in paragraph 95, except admits that Citigroup Financial Products Inc. received funds under the Term Loan Agreement.

96. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of each of paragraphs 96 through 255 of the Amended Complaint.

256. States that the allegations of paragraph 256 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, denies the allegations contained in paragraph 256, except admits that Loan Funding XI LLC received funds under the Term Loan Agreement.

257. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of each of paragraphs 257 through 568 of the Amended Complaint.

569. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 569 of the Amended Complaint and states that the last sentence of paragraph 569 contains legal conclusions as to which no responsive pleading is required.

570. States that the allegations of paragraph 570 of the Amended Complaint constitute statements as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 570 of the Amended Complaint.

**AS TO THE ALLEGED GENERAL ALLEGATIONS**

**AS TO THE ALLEGED TERM LOAN AGREEMENT**

571. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 571 of the Amended Complaint, except admits, on information and belief, that General Motors Corporation, Saturn Corporation and JPMorgan Chase Bank, N.A., as Administrative Agent, were parties to the Term Loan Agreement (as defined in the Amended Complaint) and refers to the Term Loan Agreement for the terms set forth therein.

572. Denies the allegations contained in paragraph 572 of the Amended Complaint as to Citi, denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations, and refers to the Term Loan Agreement for the terms set forth therein.

573. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 573 of the Amended Complaint.

**AS TO THE ALLEGED DIP ORDER**

574. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 574 of the Amended Complaint, except admits, on information and belief, that the Debtors filed a motion on the Petition Date (the “**DIP Motion**”), and refers to the DIP Motion for the terms set forth therein.

575. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 575 of the Amended Complaint, except admits, on information and belief, that the Debtors filed the DIP Motion and refers to the DIP Motion for the terms set forth therein.

576. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 576 of the Amended Complaint.

577. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 577 of the Amended Complaint, and refers to the DIP Order for the terms set forth therein.

578. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 578 of the Amended Complaint.

579. States that the allegations of paragraph 579 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 579 of the Amended Complaint and refers to the DIP Order for the terms set forth therein.

**AS TO THE ALLEGATION THAT THE LIEN SECURING THE TERM LOAN  
AGREEMENT WAS NOT PERFECTED AS OF THE PETITION DATE**

580. Denies the truth of the allegations of paragraph 580 of the Amended Complaint, except admits, on information and belief, that the Committee (as defined in the Amended Complaint) commenced this action.

581. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 581 of the Amended Complaint, except admits, on information and belief, that Term Loan UCC 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 the terms set forth therein.

582. Denies the allegations of paragraph 582 of the Amended Complaint, except admits, on information and belief, 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 the terms set forth therein.

583. States that the allegations of paragraph 583 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies the allegations of paragraph 583 of the Amended Complaint.

584. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 584 of the Amended Complaint, except admits, on

information and belief, that on March 1, 2013, this Court entered an order and refers to the March 1, 2013 order for the terms set forth therein.

585. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 585 of the Amended Complaint, except admits, on information and belief, that on January 21, 2015, the United States Court of Appeals for the Second Circuit entered a decision and refers to the January 21, 2015 decision for the terms set forth therein.

**AS TO THE ALLEGED  
FIRST CLAIM FOR RELIEF**

586. Repeats and re-alleges its responses to paragraphs 1 through 585 of the Amended Complaint with the same force and effect as if fully set forth herein.

587. States that the allegations of paragraph 587 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 587 of the Amended Complaint.

588. Denies the allegations of paragraph 588 of the Amended Complaint.

589. Denies the allegations of paragraph 589 of the Amended Complaint.

**AS TO THE ALLEGED  
SECOND CLAIM FOR RELIEF**

590. Repeats and re-alleges its responses to paragraphs 1 through 589 of the Amended Complaint with the same force and effect as if fully set forth herein.

591. Denies the allegations of paragraph 591 of the Amended Complaint.

592. States that the allegations of paragraph 592 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent

a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 592 of the Amended Complaint.

593. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 593 of the Amended Complaint, except admits, on information and belief, that the Court issued the DIP Order and refers to the DIP Order for the terms set forth therein.

594. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 594 of the Amended Complaint.

595. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 595 of the Amended Complaint.

596. Denies the allegations of paragraph 596 of the Amended Complaint.

597. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 597 of the Amended Complaint, except admits, on information and belief, that the Court issued the DIP Order and refers to the DIP Order for the terms set forth therein.

598. Denies the allegations of paragraph 598 of the Amended Complaint.

599. Denies the allegations of paragraph 599 of the Amended Complaint.

600. Denies the allegations of paragraph 600 of the Amended Complaint.

601. Denies the allegations of paragraph 601 of the Amended Complaint.

602. States that the allegations of paragraph 602 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 602 of the Amended Complaint.

603. Denies the allegations of paragraph 603 of the Amended Complaint.

**AS TO THE ALLEGED  
THIRD CLAIM FOR RELIEF**

604. Repeats and re-alleges its responses to paragraphs 1 through 603 of the Amended Complaint with the same force and effect as if fully set forth herein.

605. Denies the allegations of paragraph 605 of the Amended Complaint.

606. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 606 of the Amended Complaint.

607. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 607 of the Amended Complaint.

608. States that the allegations of paragraph 608 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 608 of the Amended Complaint.

609. States that the allegations of paragraph 609 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 609 of the Amended Complaint.

610. States that the allegations of paragraph 610 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 610 of the Amended Complaint.

611. States that the allegations of paragraph 611 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 611 of the Amended Complaint.

612. Denies the allegations of paragraph 612 of the Amended Complaint.

613. Denies the allegations of paragraph 613 of the Amended Complaint.

614. States that the allegations of paragraph 614 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Citi denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 614 of the Amended Complaint.

615. Denies the allegations of paragraph 615 of the Amended Complaint.

**AS TO THE ALLEGED  
FOURTH CLAIM FOR RELIEF**

616. Repeats and re-alleges its responses to paragraphs 1 through 615 of the Amended Complaint with the same force and effect as if fully set forth herein.

617. Denies the allegations of paragraph 617 of the Amended Complaint.

618. Denies the allegations of paragraph 618 of the Amended Complaint.

Citi further denies and objects to each one of the Plaintiff's "prays for judgment" numbered 1 through 8 and set forth on pages 77 and 78 of the Amended Complaint.

**AFFIRMATIVE DEFENSES**

By way for further defenses, Citi asserts the following. By virtue of alleging these further defenses, Citi does not assume any burden of proof, persuasion or production not otherwise legally assigned to it. Citi reserves the right to further amend its answer and raise any

additional defenses, counterclaims, cross-claims and third-party claims not asserted herein if and when they become appropriate.

**AS A FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN FUNDING LLC ALLEGE:**

The Amended Complaint fails to state a claim against Citi upon which relief may be granted.

**AS A SECOND AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN FUNDING LLC ALLEGE:**

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

**AS A THIRD AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN FUNDING LLC ALLEGE:**

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.

**AS A FOURTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN FUNDING LLC ALLEGE:**

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

**AS A FIFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY  
PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL  
PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN  
FUNDING LLC ALLEGE:**

The October 2008 Amendment was filed without authority and therefore is ineffective.

**AS A SIXTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY  
PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL  
PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN  
FUNDING LLC ALLEGE:**

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

**AS A SEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED  
BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL  
PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN  
FUNDING LLC ALLEGE:**

Citi was a secured party and had a perfected security interest 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.

**AS AN EIGHTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED  
BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL  
PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN  
FUNDING LLC ALLEGE:**

At the time any of the purported transfers referenced in the Amended Complaint were allegedly made by the Debtors, Citi was a perfected secured creditor thereby excepting all of the

alleged transfers from avoidance as preferential transfers pursuant to Bankruptcy Code section 547(b)(5).

**AS A NINTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN FUNDING LLC ALLEGE:**

Pursuant to Bankruptcy Code section 547(c)(2), the alleged transfers sought from Citi in the Amended 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 Citi, (b) made in the ordinary course of business or financial affairs of the Debtors and Citi, and (c) made according to ordinary business terms.

**AS A TENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN FUNDING LLC ALLEGE:**

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

**AS AN ELEVENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN FUNDING LLC ALLEGE:**

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

**AS A TWELFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA LOAN FUNDING LLC ALLEGE:**

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

**AS A THIRTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

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

**AS A FOURTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

The Plaintiff lacks standing and authority to bring the claims alleged, and the claims did not survive the confirmation of the Debtors' Chapter 11 plan.

**AS A FIFTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

The claims asserted in the Amended Complaint are barred by Sections 550(a)(2) and 550(b)(1) of the Bankruptcy Code. Under those sections of the Bankruptcy Code, the Trustee may not recover from an immediate or mediate transferee of the initial transferee who takes for value, in good faith, and without knowledge of the voidability of the transfer avoided. Citi is an immediate or mediate transferee of the initial transferee and Citi took for value, in good faith, and without knowledge of the voidability of the transfer avoided.

**AS A SIXTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

Citi was not served with the summons and complaint within the period of time prescribed by law and the Trustee's claims should therefore be dismissed for failure to properly serve Citi.

**AS A SEVENTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

The claims asserted in the Amended Complaint are barred, in whole or in part, by the single satisfaction rule set forth in Section 550(d) of the Bankruptcy Code.

**AS AN EIGHTEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

The claims asserted in the Amended Complaint against Citi are barred by the doctrines of laches and equitable estoppel.

**AS A NINETEENTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

The Plaintiff is estopped from bringing the claims asserted in the Amended Complaint against Citi.

**AS A TWENTIETH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

The claims asserted in the Amended Complaint against Citi are barred by the doctrine of mistake, which requires reinstatement of the erroneously discharged security interest.

**AS A TWENTY-FIRST AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

The claims asserted in the Amended Complaint are barred to the extent that Citi did not receive a transfer made under the Term Loan Agreement on May 27, 2009.

**AS A TWENTY-SECOND AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

The claims asserted in the Amended Complaint are barred to the extent that Citi did not receive a transfer made under the Term Loan Agreement on June 30, 2009.

**AS A TWENTY-THIRD AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

Pursuant to the Term Loan Agreement, the Debtors agreed to hold harmless and indemnify each Term Lender to the full extent of any losses, expenses, claims, or proceedings related to or arising out of the Term Loan Agreement. Citi hereby invokes all of its contractual and common law indemnity rights, and hereby provides notice to the Plaintiff and the Debtors thereof.

**AS A TWENTY-FOURTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

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

**AS A TWENTY-FIFTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

Citi hereby asserts all defenses available under federal law and under any applicable state law. Additional facts may be revealed in discovery or otherwise that support additional defenses presently available, but unknown, to Citi. Citi therefore reserves its right to assert additional

defenses in the event discovery or investigation reveals additional defenses or such additional defenses become apparent at trial.

**AS A TWENTY-SIXTH AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION  
ALLEGED BY PLAINTIFF HEREIN, DEFENDANTS CITIBANK, N.A., CITIGROUP  
FINANCIAL PRODUCTS INC., LOAN FUNDING XI LLC, AND BISMARCK CBNA  
LOAN FUNDING LLC ALLEGE:**

Citi hereby adopts and incorporates by reference any and all other defenses asserted or to be asserted by any other defendants named in the Amended Complaint to the extent that such defenses are available to Citi.

WHEREFORE, Citi respectfully requests that judgment be entered in its favor as follows:

- A. Dismissing with prejudice Plaintiff's Amended Complaint in its entirety and on the merits;
- B. Awarding Citi its costs of defending this action, including reasonable attorneys' fees, costs and disbursements; and
- C. Awarding to Citi such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
November 16, 2015

Respectfully submitted,

By: /s/ Elliot Moskowitz  
Elliot Moskowitz  
Marc J. Tobak

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Loan Funding XI LLC, and  
Bismarck CBNA Loan Funding LLC*