

Sale Approval Hearing: May 27, 2009 at 10:00 a.m.
Sale Objections Due: May 19, 2009 at 4:00 p.m.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
: :
CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
Debtors. : (Jointly Administered)
-----X

**OBJECTION OF THE COMMITTEE OF CHRYSLER AFFECTED DEALERS TO
MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR AN ORDER
AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'
OPERATING ASSETS AND FOR OTHER RELIEF**

TO THE HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

The Committee of Chrysler Affected Dealers (the “Dealer Committee”)¹, by and through its undersigned counsel, hereby files this objection (the “Objection”) to the motion (the “Sale Motion”) (Doc. No. 190) of the above-captioned debtors and debtors in possession (collectively, “Chrysler” or “Debtors”) seeking authority to sell substantially all of their assets, free and clear of all liens and certain other claims and interests, to New CarCo Acquisition LLC (which would change its name to “Chrysler LLC” at closing) (“New Chrysler”), pursuant to a Master Transaction Agreement, dated as of April 30, 2009 (the “MTA”), and certain related documents (the “Chrysler Restructuring Transaction”). In a separate application today (the “Continuance Request”), the Dealer Committee also requests this Court to enter an Order to show cause why the following dates should not be postponed: (1) the hearing date on, and any disposition of, the Sale Motion; and (2) the response deadline and hearing date on the Omnibus Motion of Debtors and Debtors in Possession for an Order (A) Authorizing the Rejection of Executory Contracts and Unexpired Leases with Certain Domestic Dealers and (B) Granting Certain Related Relief (Doc. No. 780) (the “Motion to Reject”). The relief requested by the Dealer Committee and the Affected Dealers is also supported by the following declarations: (1) Declaration of Robert Archer dated May 18, 2009 (“Archer Decl.”); (2) Declaration of Homer Cutrubus dated May 18, 2009 (“Cutrubus Decl.”); (3) Declaration of Gary L. Curry dated May 18, 2009 (“Curry Decl.”); (4) Declaration of Nicholas Parks dated May 18, 2009 (“Parks Decl.”) (5) Declaration of Gerald

¹ The Dealer Committee was formed to advance the mutual and collective interest of Chrysler’s dealers that are the subject of the Motion to Reject. Since the Dealer Committee’s formation, nearly 300 of such dealers from 45 states have elected to participate with and support the Dealer Committee, and more are joining every day. This Objection is being filed on behalf of the Dealer Committee and the dealers that have elected and that subsequently elect to join the Dealer Committee’s efforts (collectively, the “Affected Dealers”). A current list of the Affected Dealers is attached as Exhibit A to this Motion and incorporated herein. This list will be updated as further Affected Dealers join.

Spitler dated May 18, 2009 ("Spitler Decl."); (6) Declaration of Greg Taylor dated May 18, 2009 ("Taylor Decl."); (7) Declaration of Wade D. Walker dated May 18, 2009 ("Walker Decl."); and (8) Declaration of Guy Willey dated May 18, 2009 ("Willey Decl."). In support thereof, the Dealer Committee respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Chrysler Restructuring Transaction, when combined with the relief requested in the Motion to Reject, would devastate the Affected Dealers. It would: (1) destroy several hundred independent businesses across the United States; (2) ruin the livelihoods of the owners of these businesses, many of whom have operated their dealerships for decades, if not generations; (3) cause the immediate loss of thousands of jobs at the Affected Dealers and quickly reverberate in countless additional job losses at the vendors, suppliers and financiers of the Affected Dealers; (4) precipitate inevitable personal and business bankruptcies flowing from the closing of the Affected Dealers; (5) reduce tax revenues by millions of dollars annually in the states and communities where the Affected Dealers are located; (6) eliminate the significant civic and charitable support that the Affected Dealers contribute to their neighborhoods and communities; and (7) limit competition among the car-buying public, thereby harming consumers. It is impossible to overstate the irreparable harm and suffering that will be inflicted on the Affected Dealers, their thousands of employees, and their employees' families by Chrysler's requested relief.

2. And to what end? Maintaining the Affected Dealers *does not cost Chrysler anything*. By design, Chrysler requires all of its dealers to pay for *everything* – inventory, parts and equipment, real estate, and salaries and benefits. Keeping the Affected Dealers in business thereby does not harm Chrysler (and would certainly avert the harm to customer loyalty that the

Motion to Reject will surely cause). To the contrary, the primary source of revenue for Chrysler is its dealer network.

3. When attempting to justify why it needs to consummate the unprecedented rejection of 789 dealer relationships, Chrysler retreats to vague generalities about making itself more efficient some day down the road. That is a distant goal, which is of questionable certainty at best. It certainly cannot justify the rejection – on less than 30 days notice – of 789 franchises with all of the concomitant costs to the Affected Dealers, their employees, and their communities. The combined relief sought in the Sale Motion and Motion to Reject is unnecessarily punitive without any corresponding or measurable benefit to Debtors’ estates.

4. The financial and emotional catastrophe that would be wrought by the relief requested in the Sale Motion and Motion to Reject need not and should not happen – and certainly not with only three business days notice.² Under well-settled principles of bankruptcy law and fundamental notions of due process, the Chrysler Restructuring Transaction cannot lawfully happen, at least as currently proposed. Rather, the Court must require Chrysler to subject its restructuring proposal to the transparency, fairness and equal treatment of similarly-situated creditors mandated by the disclosure and plan confirmation provisions of the Bankruptcy Code. And the Court must also afford the Affected Dealers the notice and procedural protections that due process and the Bankruptcy Rules command in responding to the Sale Motion and Motion to Reject.

5. As an initial matter, the Dealer Committee objects to the Chrysler Restructuring Transaction because it is an unlawful *sub rosa* plan. It is a *sub rosa* plan not merely because it

² As explained below, based on the structure and timing of these two motions, if the Court were to grant the Sale Motion, it may very well strip the Affected Dealers of any meaningful remedy in opposition to the Motion to Reject. Because the Affected Dealers have been provided inadequate notice, the Dealer Committee is filing this under extreme time pressure and without any opportunity to conduct discovery, and therefore it reserves the right to supplement this Objection.

provides for the sale of substantially all of Chrysler's assets outside of and before a formal plan of reorganization or liquidation is filed. Rather, the transaction constitutes a *sub rosa* plan *also* because it contains nearly all other hallmarks of a plan and because it requires that only certain favored unsecured (or woefully undersecured) creditors – the “New VEBA” and the U.S. Treasury – receive value in the form of majority ownership of New Chrysler and new debt issued by New Chrysler, apparently in exchange for their prepetition claims. Certain unsecured creditors, such as the Affected Dealers (if Chrysler prevails in rejecting their agreements and/or stripping them of their state law dealer protections), have no opportunity to participate in the ownership of New Chrysler.

6. If that is Chrysler's desired outcome, then it should have presented the transaction to its constituencies with adequate disclosure and subjected it to the plan confirmation process, including the vote of impaired classes and ultimately this Court's determination of whether (among other standards) the plan was proposed in good faith, properly classified creditors, was fair and equitable, and did not unfairly discriminate against impaired dissenting classes. And under the Bankruptcy Rules, Chrysler could have disclosed and sought confirmation of a plan as expeditiously as seeking approval under section 363.

7. In addition, the Dealer Committee objects to the Sale Motion and seeks, in its contemporaneously submitted Continuance Request, a continuance of the hearing on the Sale Motion because the Sale Motion necessarily implicates (and may very well determine the outcome of) the Motion to Reject. If the Court were to approve the requested restructuring transaction, it may effectively moot any objection to the Motion to Reject and deprive the Dealer Committee and Affected Dealers of any opportunity to be heard.

8. Debtors freely admit the complexity, magnitude, and severe and wide-ranging repercussions of the contemplated rejections (Motion to Reject at ¶ 20), but they nevertheless invite this Court to reject 789 contracts based on nothing more than their conclusory statements that rejection of these contracts is an appropriate exercise of the Debtors' sound business judgment. Notwithstanding the alleged urgency and even the intervention of the U.S. government in Chrysler's restructuring, due process, the Bankruptcy Rules, and basic notions of fundamental fairness require that the Dealer Committee and the Affected Dealers have adequate notice and an opportunity (including discovery) to defend against the elimination of the Affected Dealers' dealerships and their livelihood, as well as to resist the circumvention of the Affected Dealers' state law rights.

9. Chrysler admittedly has spent years developing a business plan that will devastate 789 dealers and countless thousands of employees and their families (Motion to Reject at ¶¶ 33, 46), but has provided these parties with only three business days notice to respond to this unprecedented and unlawful request.

10. Bankruptcy Rule 6006 provides that when a rejection request takes place outside of plan confirmation, such as here, those affected are entitled to the full scope of protections afforded to contested matters. Such protections are vital and necessary in this case. The prejudicial and harmful consequences to the Dealer Committee and Affected Dealers cannot be overstated.

FACTUAL BACKGROUND

11. On April 30, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code").

12. On May 1, 2009, the Court entered an Order directing the joint administration of the Debtors' chapter 11 cases. The Debtors' cases are consolidated for procedural purposes only.

I. Facts Related To The Chrysler Restructuring Transaction.

13. Under the prepetition First Lien Credit Agreement,³ as of the Petition Date, Chrysler owed its first lien prepetition lenders approximately \$6.9 billion, secured by a first priority lien on substantially all of Chrysler's assets. (Sale Motion at ¶ 13).

14. Under the prepetition Owner's Loan Agreement, Chrysler owes \$2 billion, secured by a second priority lien on substantially all of Chrysler's assets. (*Id.* at ¶ 14). According to the Sale Motion, this debt may be forgiven under a proposed settlement. (*Id.* n.2).

15. Under the prepetition TARP Financing, Chrysler Parent owes \$4.267 billion to the U.S. Treasury, secured by a third priority lien on the same collateral securing the approximate \$8.9 billion aggregate first and second lien obligations and a first priority lien on "unencumbered assets and Chrysler's Mopar parts inventory." (*Id.* at ¶ 15).

16. The first lien holders, with claims at filing of \$6.9 billion secured by first priority security interests in substantially all of the assets of Chrysler, would be expected to recover, in a liquidation, between 9% and 38% of their claims, on a net present value basis. The U.S. Treasury, with claims secured by first priority liens only on the Mopar inventory and certain real estate assets, would only be expected to recover between 3% and 6% of its claims, on a net present value basis. (Declaration of Robert Manzo ("Manzo Dec."), ¶¶ 79 and 80).

17. Chrysler also has certain prepetition unsecured obligations arising from a 2008 Settlement Agreement with the UAW and Chrysler retirees, including an obligation to contribute cash and securities to a voluntary employee beneficiary association (the "New VEBA") and an

³ Capitalized terms not defined herein have the meanings assigned them in the Sale Motion.

obligation to transfer to the New VEBA funds in an “existing internal VEBA.” (Kolka Decl. at ¶ 44).

18. As set forth in the Sale Motion, Chrysler has been addressing its operational and financial challenges for a significant period of time. (*Id.* at 8-16). Moreover, it has been widely-known for several months that a chapter 11 filing by Chrysler was well within the realm of possibility. Indeed, Chrysler hired Jones Day as restructuring counsel by no later than early December of 2008. *See* THE WALL STREET JOURNAL, Dec. 5, 2008 (“In a statement, [Chrysler] confirmed it has retained Jones Day and other outside advisors ‘to provide a comprehensive independent analysis of the various options available to the company.’”).

19. Part of Chrysler’s restructuring efforts was the pursuit of partnerships and strategic alliances, which led, after “extensive discussions,” to a January 16, 2009 term sheet with Fiat S.p.A. (“Fiat”) for a strategic alliance. (*Id.* at ¶¶ 18-22, 33).

20. As part of the Chrysler Restructuring Transaction, Chrysler and Fiat entered into the MTA (referred to in the Sale Motion as the “Purchase Agreement”), pursuant to which New Chrysler will acquire substantially all of the operating assets of Chrysler in exchange for assuming certain prepetition liabilities of Chrysler and paying \$2 billion in cash. (*Id.* at ¶41; MTA at §§2.06, 2.08, 2.13).

21. Pursuant to the Chrysler Restructuring Transaction, New Chrysler will initially issue the membership interests in New Chrysler, as follows: 67.69% to the New VEBA, 9.85% to the U.S. Treasury and 2.46% to the Canadian government. Operating LLC Agreement (Exhibit H to MTA) (“New Chrysler LLC Agreement”), Schedule of Members. Fiat will retain 20% of the membership interests in New Chrysler. (Sale Motion at ¶41). Under the New Chrysler LLC Agreement, if certain performance criteria referred to as “Class B Events” are

attained, then Fiat's membership interest would increase by 15% and the members' ownership would shift to New VEBA - 55%, Fiat - 35%, U.S. Treasury - 8%, Canadian government - 2%. New Chrysler LLC Agreement at §3.4.

22. For reasons that Debtors decline to explain, the Sale Motion recites the New Chrysler ownership percentages for the New VEBA, the U.S. Treasury and the Canadian government under the Chrysler Restructuring Transaction based on the assumption that the Class B Events will occur. In any event, nowhere in the Sale Motion does Chrysler disclose the consideration in exchange for which these three prepetition creditors would receive equity interests in New Chrysler. (*See, e.g.*, Sale Motion at ¶ 58 (summary of "Other Purchaser Transactions")).

23. It appears, however, that the New VEBA's ownership interest in the restructured Chrysler, together with a \$4.587 billion note, are being provided on account of its prepetition unsecured claim under the 2008 Settlement Agreement. Pursuant to the terms of the UAW Retiree Settlement Agreement, a form of which is attached as Exhibit K to the MTA, between New Chrysler and the UAW, New Chrysler agreed, subject to consummation of the MTA, to, among other things, (a) divide Chrysler's Other Post-Employment Benefits ("OPEB") liability into two bookkeeping accounts in the existing Chrysler VEBA, with one account for employees and retirees not represented by the UAW and one account for UAW-represented employees and retirees (the "UAW Related Account"), (b) transfer the liabilities associated with the UAW Related Account to the New VEBA, (c) assume a fixed amount of such UAW Related Account liabilities by issuing a promissory note for the benefit of the New VEBA in the amount of \$4.587 billion, and (d) issue the membership interest initially representing 67.69% of the membership

interests in New Chrysler. (UAW Retiree Settlement Agreement 5th Introductory Paragraph, and §§ 4, 6, 7, 9).

24. Capstone Advisory Group, LLC (“Capstone”), Chrysler’s financial advisor, estimates the amount of the prepetition OPEB liability converted to equity in New Chrysler to be \$3.84 billion. (Exhibit D to Declaration of Robert Manzo, Chrysler Fiat Alliance Section 363 Analysis dated April 26, 2009, OPEB Activity and Member’s Interest Changes, at 3 (back-up) and 5 (back-up)).

25. Moreover, the Equity Recapture Agreement between the U.S. Treasury and the New VEBA demonstrates that the U.S. Treasury and Canadian government, together with Fiat, are the true equity holders in New Chrysler, with New VEBA’s equity ownership merely transitional as a means of repaying the prepetition liability. The Equity Recapture Agreement provides that the U.S. Treasury is entitled to receive all “up-side” benefits of the New Chrysler membership interest in excess of \$4.25 billion, increasing at a rate of 9% per annum compounded annually from January 1, 2010. (Equity Recapture Agreement at §§ II.C., III. and IV).

26. Discovering the consideration given by the U.S. Treasury and the Canadian government in exchange for the membership interests in New Chrysler (and future “up-side”) is likewise challenging. It does not appear in the Sale Motion, nor, apparently, even in the Chrysler Restructuring Transaction documents. Rather, hints of it only surface in the assumptions and analysis of Capstone. The membership interest in New Chrysler received by the U.S. Treasury pursuant to the MTA may be received in exchange for the conversion of the prepetition TARP Financing – which is overwhelmingly undersecured based on Capstone’s liquidation analysis. (Manzo Dec., Exhibit D, Chrysler Fiat Alliance Section 363 Analysis dated April 26, 2009,

Member's Interest Changes, External Debt Activity and Footnotes to Cash Flow Statement 2009-2016 Plan, pp. 3, 5 (back-up), 8 (back-up)).

II. Facts Relating to the Affected Dealers.

27. On May 14, 2009, the Debtors filed their Motion to Reject. Attached as Exhibit A to the Motion to Reject is a schedule identifying 789 separate dealers (the "Dealers") whose franchise agreements the Debtors are seeking to reject.

28. As a direct result of the Motion to Reject, the Affected Dealers are the subject of an unprecedented, wholesale mass franchise termination request that, if authorized by the Court, will result in the loss of tens of thousands of jobs. Moreover, the requested dealer agreement rejection would be effective on June 9th, less than 30 days from the date the Motion to Reject was filed (notwithstanding Chrysler's alleged multi-year planning for such an eventuality).

29. There are approximately 20,700 independent, franchised, new car automobile dealers in the U.S. These dealers represent the largest retail segment in the U.S., with approximately \$693 billion in revenues in 2007, while employing over 1.1 million people. Casesa Shapiro Group, *The Franchised Automobile Dealer* at 2-3 (Nov. 26, 2008) (attached to Doc. No. 933) ("Casesa Report"). The U.S. dealers have \$233.5 billion invested in their own businesses, more than the total industrial assets of any of the world's largest automobile manufacturers. These dealers, in effect, deflect the financial risk from the manufacturers by putting their own capital at risk. Additionally, these dealers comprise nearly 20% of all retail sales in the U.S., and, in total, pay billions annually in state and local income taxes. *Id.*

30. According to statistics compiled by the National Automobile Dealers Association ("NADA") for economic activity in the year 2007, new vehicle dealerships in the U.S. employed 1,114,500 people, with an average of 53 employees per dealership. (See "*Driving the United*

States' Economy,” available at <http://www.nada.org/NR/rdonlyres/E51CEDC3-E39D-4C70-AD75-3ACCB5685251/0/StateeconomiesAnnualContributions.pdf>). The average annual earnings of the new vehicle dealership employees was \$48,339, and the average annual payroll per new vehicle dealership was \$2.59 million. *Id.*

31. The Debtors’ domestic dealer network (the “Dealer Network”) is of vital importance to the Debtors’ business. The Dealer Network is a largely independent and self-financed business, separate and apart from the Debtors, and provides the critical cog in the distribution network between the assembly line and the ultimate consumer. The average dealership has approximately \$2.5 million invested in land, buildings, furniture, fixture and equipment, and an additional \$4.9 million in new car inventory. (Casesa Report at 4). The distribution channels provided by the Dealer Network operate at “virtually **no cost** to the manufacturer.” (*Id.* at 5 (emphasis added)).

32. As of the Petition Date, the Dealer Network (all but a small fraction of which is independently owned) was comprised of 3,181 dealers employing over 140,000 people. (Motion to Reject at ¶ 23). The Dealer Network includes dealers in every state in the nation and in every major metropolitan area, as well as extensive coverage in secondary and rural markets. (*Id.*; see also Motion of Debtors and Debtors in Possession for Interim and Final Orders Authorizing the Debtors to Honor or Pay Prepetition Obligations to or for the Benefit of Their Dealers and other Customers, and for Related Relief (Doc No. 27) (the “Prepetition Obligation Motion”). The Debtors describe the Dealer Network as “the public face of their businesses.” (Prepetition Obligation Motion at ¶ 19). In light of the far-ranging depth and breadth of the Dealer Network and its many employees, the extraordinary relief requested by the Debtors will have extensive and severe repercussions among countless states, cities, communities and, ultimately, families.

33. In support of their first day motions for relief, the Debtors filed the Declaration of James J. Arrigo (the "Arrigo Decl."). Mr. Arrigo is the owner of two Chrysler-Dodge-Jeep dealerships in South Florida. The Declaration of Mr. Arrigo, who also testified on behalf of the Debtors at the first day hearings, provided key, firsthand insight into the dire situation facing the Affected Dealers, including the following:

- "Chrysler's dealer network is a good example of the American entrepreneurial spirit. The Chrysler dealers located throughout the United States represent a small group of business owners. Although these small businesses have historically operated successful business operations, the dealerships are now in serious trouble and on the brink of collapse." (Arrigo Decl. at ¶8).
- "Many Chrysler dealerships are in financial distress and the situation has deteriorated rapidly in recent weeks. In my professional life, and over the past 30 years, this is the most dire situation I have ever seen in the car business." (*Id.* at ¶11).
- "These dealers were pillars of the local community, benefactors of local sports and charities and in some instances the community's largest employer and source of tax revenue." (*Id.* at ¶12).

34. The Debtors found it advantageous and expedient to rely on the Arrigo Declaration in portraying the "dire straits" of the Affected Dealers while seeking relief from this Court at the first day hearings on April 30 and May 3. Such compunctions, however, were less than evident on May 13, 2009, when the Debtors unceremoniously mailed overnight UPS letters to 789 of their dealers, including the Affected Dealers, informing them that their dealership agreements will be rejected within less than 30 days (see, e.g. Correspondence attached as Exhibit A to the Declaration of Guy Willey) (the "Rejection Letter").

35. As set forth in the Rejection Letter, not only were the Affected Dealers notified that Chrysler would seek court approval for the rejection of their dealership agreements in less than 30 days, they were also informed of the following "transition" procedures being offered by

the Debtors to help assuage the pain of the highly accelerated and unprecedented wholesale rejections:

- “As a result of its recent bankruptcy filing, Chrysler LLC *is unable to repurchase your new vehicle inventory*. However we will assist with the redistribution of as many of your eligible vehicles as possible, among the dealers remaining in the Chrysler network.”
- “As a result of its recent bankruptcy filing, Chrysler LLC *is unable to repurchase your Mopar parts inventory*. However we will endeavor to match you with a dealer to consider purchase of your parts. This redistribution will occur among the dealers remaining in the Chrysler network.”
- “As a result of its recent bankruptcy filing, Chrysler LLC *is unable to repurchase your Essential/Special tools*. However we will assist with the redistribution of as many of your Essential/Special tools as possible. This redistribution will occur among the dealers remaining in the Chrysler network.”
- “All warranty, MOPAR, Recall, Transportation and Chrysler Service Contract Claims must be submitted to Chrysler Motors LLC for payment within seven days of the expected court approved rejection date. . . Warranty repairs performed after the rejection date are not eligible for payment.”

(Emphasis added). If the dealers are indeed the “public face” of Debtors’ business, the Affected Dealers represent the proverbial nose being cut off in a fury of bankruptcy-induced spite. If Chrysler is permitted by the Court to carry out its restructuring plan, the Affected Dealers will be saddled with countless millions of dollars of inventory and equipment that Chrysler refuses to repurchase (among other claims). Deprived of any advance notice of the terminations, the Affected Dealers do not even have an opportunity to attempt to mitigate the dramatic nature of the harm befalling them. Instead, Chrysler seems intent on dragging many of the Affected Dealers into bankruptcy with it.

36. The “transition procedures” described above are particularly egregious in the light of Chrysler’s actions prior to the Petition Date. As set forth in the declarations, much of Affected Dealers’ current inventory on hand was purchased in response to pressure from

Chrysler to be a “team player”, *i.e.* by purchasing additional stock for the “good of Chrysler” despite the prevailing economic conditions. *See* Curry Decl. at ¶ 7; Parks Decl. at ¶ 9; Archer Decl. at ¶¶ 6-9; Taylor Decl. at ¶ 8; Walker Decl. at ¶ 7; Willey Decl. at ¶ 8; Spitler Decl. at ¶ 2. Should Chrysler be permitted to reject the dealership agreements, not only will the Affected Dealers be forced to liquidate their dealerships (including specialty tools and equipment purchased over the years at a cost of several hundreds of thousands of dollars) for pennies on the dollar, but the remaining inventory of vehicles will have to be sold as used cars without the benefit of Chrysler incentives. Forcing the Affected Dealers to suffer this loss of value only compounds the injustice, particularly as many only agreed to purchase the additional inventory as an accommodation to Chrysler in the first place. *Id.*

37. In 2007, Chrysler’s Dealer Network generated approximately \$105 billion in revenue and spent \$575 million on advertising. (See, News Archive, “*Chrysler LLC Dealers Deliver Main Street Message to Washington*,” Nov. 16, 2008).⁴ During the first nine months of 2008, Chrysler’s Dealer Network invested \$132 million of their own money solely to upgrade their U.S. facilities (often at Chrysler’s behest). (Id.) Now, in less than a month, 789 members of that Dealer Network, the “public face of [the] business,” will be effectively destroyed, with the inventory forcibly “redistributed” into the prevailing winds of their former competitors (who know that they will have to pay no more than firesale prices for the inventory).

38. The Motion to Reject takes great pains to justify the rationale behind the wholesale rejection of the Affected Dealers; however, curiously enough, at no point is the justification broken down into actual costs to the Debtors and their estates. Rather, the Motion to Reject relies upon a vague and nebulous description of unspecified oversight, auditing and monitoring duties which allegedly compel the Debtors to “spend additional resources.” (See,

⁴ http://www.chryslerllc.com/en/news/article/?lid=chrysler_deliver_message_washington&year=2008&month=11

Motion to Reject at ¶15). Additionally, a thorough review of the Second Declaration of Peter M. Grady, filed in support of the Motion to Reject (the “Second Grady Decl.”), yields no further enlightenment regarding the actual cost to the Debtors and their estates, again pointing to the need to devote unspecified “additional resources” to “processes, and procedures, oversight of the dealer network, auditing and monitoring expenses for dealer operations, and all of the other operational expenses that must be incurred to maintain, support, facilitate and oversee a larger dealer network.” (Second Grady Decl. at ¶16). In fact, it appears that the real impetus behind the rejections is to benefit certain creditors – dealers permitted to stay in business – at the expense of others, because these dealers will now have less competition to worry about.

39. Although the Motion to Reject fails to adequately quantify the elusive costs and burdens that would inform the Debtor’s business judgment in taking such drastic action, the Affected Dealers can explain the wholesale devastation being unleashed by the Debtors’ actions.

40. As the attached declarations from a small sampling of the Affected Dealers explain (given the Dealer Committee’s limited time to investigate even within the Affected Dealers), the Affected Dealers have invested significant resources (usually at the request of Chrysler) into their dealerships. For example, *as recently as April of 2009*, Chrysler urged Homer Cutrubus, owner of Dodge/Chrysler/Jeep franchises in Utah, to combine two of his facilities in Layton, Utah. *See* Cutrubus Decl. at ¶¶ 4, 5. Mr. Cutrubus resisted, but Chrysler kept pushing. *Id.* Indeed, Chrysler sent Mr. Cutrubus an e-mail regarding its “proposed plan to combine all franchises in Layton and Odgen into one location” and asking “Are you our guy?” *Id.* at ¶ 5 and Ex. C to Cutrubus Decl. Being a team player, Mr. Cutrubus capitulated and consolidated the two facilities, at a cost of over \$100,000. *Id.* at ¶ 6. Now Chrysler is seeking to reject Cutrubus’ dealer agreements.

41. Rogers Dodge, Inc. (“Rogers”) -- a family owned franchise -- has invested over \$6,000,000 into its Dodge dealership, including the construction of a new state-of-the-art facility designed by Dodge in 2006 that “was specifically designed to sell Dodge vehicles and is ill-suited for any other purpose.” Parks Decl. at ¶ 3. *See also* Curry Decl. at ¶ 5 (invested over \$3.3 million in Baytown Chrysler/Jeep/Dodge franchise).

42. At Chrysler’s request, Gerald Spitler -- owner of Buzz Leonard Chrysler-Jeep -- sold his Mitsubishi franchise at a cost of \$200,000 so that he could become a free-standing Chrysler Jeep dealer. *See* Spitler Decl. at ¶ 2.

43. Moreover, in the last several months, Chrysler pressured dealers to purchase additional, unneeded stock in an effort to keep Chrysler afloat. *See* Curry Decl. at ¶ 7 (currently has 150-160 new vehicles and \$220,000 worth of parts); Parks Decl. at ¶ 9 (currently has 190 vehicles and \$120,000 worth of parts); Archer Decl. at ¶¶ 6-9 (for three dealerships, currently has approximately 700 vehicles in stock and approximately \$1.7 million in parts); Taylor Decl. at ¶ 8 (currently has 21 vehicles and over \$36,000 in parts); Walker Decl. at ¶ 7 (seven vehicles and \$60,000 worth of parts); Willey Decl. at ¶ 8 (currently has 78 vehicles and over \$150,000 in parts); Spitler Decl. at ¶ 2. Yet, Chrysler is now refusing to purchase this inventory. *See, e.g.,* Ex. A to Archer Decl. If the dealer agreements are rejected, the Affected Dealers will be forced to sell their inventory of vehicles as used cars without the benefit of the manufacturers’ warranties or sales incentives. *See* Curry Decl. at ¶ 7; Parks Decl. at ¶ 9; Archer Decl. at ¶ 9; Taylor Decl. at ¶ 8; Walker Decl. at ¶ 4; Willey at ¶ 8.

44. As independently owned franchises, dealers have to alone bear the costs and expenses incurred by their dealerships, including those relating to land, showroom, inventory, personnel, training, employee benefits, maintenance, signage, advertisements, insurance and

taxes. Taylor Decl. at ¶ 3; Parks Decl. at ¶ 4; Curry Decl. at ¶ 3; Archer Decl. at ¶ 3; Walker Decl. at ¶ 3; Willey at ¶ 3. These costs and expenses are not subsidized by Chrysler. *Id.*

45. Because the dealerships were successful or because the dealers had made significant investments at Chrysler's request, the declarants were surprised to learn that Chrysler was asking to reject their dealer agreements. Archer Decl. at ¶ 4; Curry Decl. at ¶¶ 4, 5; Parks Decl. at ¶¶ 5-7; Spitler Decl. at ¶ 3; Taylor Decl. at ¶ 6; Willey Decl. at ¶¶ 4, 5.

46. If Chrysler can successfully reject its dealer agreements with the Affected Dealers, these dealers will suffer devastating losses, including be forced to liquidate assets at pennies on the dollar. *See* Curry Decl. at ¶ 5; Parks Decl. at ¶¶ 7, 8, 10; Spitler Decl. at ¶ 3; Taylor Decl. at ¶ 6; Willey Decl. at ¶ 8.

47. A significant number of employees will be impacted. *See* Curry Decl. at ¶ 5 (employs 34 people); Archer Decl. at ¶ 5 (three dealerships employ over 250 people); Parks Decl. at ¶ 8 (employs 38 people); Cutrube Decl. at ¶ 8 (in excess of 100 jobs are now at risk); Taylor Decl. at ¶ 7 (employs over 25 people).

48. And, in some cases, the dealerships will likely be forced to close their doors and potentially file for bankruptcy. *See* Curry Decl. at ¶ 5 (“Without a franchise, our investment of approximately \$3.3 million will be worth almost nothing. Liquidation expenses and loss of franchise will total in the millions and force us into bankruptcy.”); Parks Decl. at ¶ 8 (“The loss of the Dodge franchise will force Rogers to shutter its doors . . .”); Taylor Decl. at 6 (“uncertain whether Taylor-Parker will be able to continue to pay its operational expenses or remain a viable business”); Walker Decl. at ¶ 4 (“Many rejected dealers will immediately go out of business.”).

49. If the Affected Dealers are forced to close their doors, such closures will not only impact the owners and employees of those dealerships; the communities where the Affected

Dealers are located will also be impacted. Many of these dealerships play a vital role in their communities, including supporting charitable organizations. *See* Walker Decl. at ¶ 6; Taylor Decl. at ¶ 9.

ARGUMENT

50. By this Objection and the Continuance Request, the Dealer Committee requests that the Court enter an Order: denying authorization for the Chrysler Restructuring Transaction, continuing the hearing on the Sale Motion and granting a continuance of the response and hearing deadlines for the Motion to Reject in order to enable the Dealer Committee a reasonable period of time to conduct basic discovery necessary to defend against the Sale Motion and the Motion to Reject and properly present the issues to the Court. The Dealer Committee needs time not simply to conduct discovery, but also to fully investigate the facts known and evidence possessed by the Affected Dealers themselves.

51. The Chrysler Restructuring Transaction is an improper and impermissible *sub rosa* plan that appears to seek, under the veiled guise of an asset sale, to subvert the normal distribution scheme and procedural rights of creditors mandated by chapter 11 in contravention of the basic purposes behind chapter 11 reorganization.

52. The Chrysler Restructuring Transaction also tramples on the due process rights of Affected Dealers by effectively accomplishing the rejection of their contracts before they have any meaningful opportunity to be heard. This Court must, at a minimum, permit discovery and record development in order to fully assess the responses of the Dealer Committee to the Motion to Reject, which by Chrysler's own admission includes consideration of several novel and important legal issues.

I. The Chrysler Restructuring Transaction Is An Improper *Sub Rosa* Plan That Cannot be Approved under Section 363(b)

53. Section 363(b) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Estate property may not, however, be so used “if it would amount to a *sub rosa* plan of reorganization.” *In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007) (addressing proposed settlement). *Sub rosa* plans are prohibited based on “a fear that a debtor-in-possession will enter into transactions that will, in effect, ‘short circuit the requirements of [C]hapter 11 for confirmation of a reorganization plan.’” *Id.*, quoting *Pension Benefit Guar. Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc.)*, 700 F.2d 935, 940 (5th Cir. 1983). *See also Institutional Creditors of Continental Air Lines, Inc. v. Continental Airlines, Inc. (In re Continental Airlines, Inc.)*, 780 F.2d 1123, 1126-28 (5th Cir. 1986) (chapter 11 debtor “cannot use § 363(b) to sidestep the protection creditors have when it comes time to confirm a plan of reorganization.... Likewise, if a debtor were allowed to reorganize the estate in some fundamental fashion pursuant to § 363(b), creditor’s [sic] rights under, for example 11 U.S.C. §§ 1125, 1126, 1129(a)(7), and 1129(b)(2) might become meaningless. Undertaking reorganization piecemeal pursuant to § 363(b) should not deny creditors the protection they would receive if the proposals were first raised in the reorganization plan.”); *Clyde Bergemann, Inc. v. The Babcock & Wilcox Co. (In re The Babcock & Wilcox Co.)*, 250 F.3d 955, 960 (5th Cir. 2001) (“[T]he provisions of § 363 . . . do not allow a debtor to gut the bankruptcy estate before reorganization or to change the fundamental nature of the estate’s assets in such a way that limits a future reorganization plan.”).

54. The transactions contemplated by the Chrysler Restructuring Transaction contain many of the hallmarks of a chapter 11 plan of reorganization, while providing none of the

creditor protections afforded by the chapter 11 plan disclosure, solicitation and confirmation process. As such, the Chrysler Restructuring Transaction constitutes a *sub rosa* plan that cannot be approved under section 363. Section 1123(a)(5) of the Bankruptcy Code provides that a plan of reorganization must contain “adequate means for the plan’s implementation.” These include (i) the “transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan” (§ 1123(a)(5)(B)); (ii) the “sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate” (§ 1123(a)(5)(D)); (iii) “satisfaction or modification of any lien” (§ 1123(a)(5)(E)); (iv) “curing or waiving of any default” (§ 1123(a)(5)(G)); and (v) “issuance of securities ... of any entity referred to in subparagraph (B) for cash, for property, for existing securities, or in exchange for claims or interests...” (§ 1123(a)(5)(J)).

55. Under the Chrysler Restructuring Transaction (i) substantially all of the assets of the Debtors will be sold or transferred to New Chrysler, (ii) the cash coming into the estate will be distributed on account of prepetition secured claims against (*i.e.*, an interest in) property of the estate, (iii) a very significant portion of the Debtors’ liabilities will be resolved, (iv) defaults under contracts to be assigned to New Chrysler will be cured, and (v) securities of New Chrysler will be issued to only certain holders of prepetition claims against the Debtors. In short, the Chrysler Restructuring Transaction is a plan masquerading as a sale in order to avoid any of the burdens that accompany confirmation of a plan, including the protection of creditors, such as the Affected Dealers, against discrimination and unfair or inequitable treatment.

56. The key case within the Second Circuit addressing the core issue before the Court – whether the Chrysler Restructuring Transaction constitutes an impermissible *sub rosa* plan that

cannot be approved under section 363 but must be subjected to the disclosure requirements and confirmation standards of chapter 11 – is the district court’s decision in *Contrarian Funds, LLC v. WestPoint Stevens, Inc. (In re WestPoint Stevens, Inc.)*, 333 B.R. 30 (S.D.N.Y. 2005).

57. In *WestPoint Stevens*, the bankruptcy court approved the sale of substantially all of the debtors’ assets pursuant to sections 363(b) and (f) of the Bankruptcy Code. The sale contemplated a transaction that would be accomplished in two “stages,” though designed to occur contemporaneously. In Stage 1, substantially all of the assets would be sold to WestPoint International, Inc. and WestPoint Home, Inc. (“Purchasers”) in return for stock of Aretex, LLC (“Aretex”), the parent of the Purchasers, subscription rights for additional stock, some cash consideration and the assumption of certain liabilities. *Id.* at 33-34. The debtors’ first lien secured lenders would receive a replacement lien on the stock and subscription rights up to the value of the first lien debt, pursuant to section 363(e). *Id.* In Stage 2, all of the stock and a significant portion of the subscription rights would be distributed to the first lien lenders in full satisfaction of their debt, with the remainder of the subscription rights issued to the holders of second lien debt in partial satisfaction of their claims. *Id.* The transaction would result in the first lienholders receiving stock and subscription rights valued at approximately \$489 million in full satisfaction of their debt and the second lienholders receiving subscription rights valued at approximately \$95 million in partial satisfaction of \$167 million in second lien debt. *Id.*

58. The first lienholders (excluding Aretex, which held a minority portion of the first lien debt and a majority of the second lien debt), objected to the proposed transaction, particularly the in-kind distribution of the stock and subscription rights, the distributions to the second lienholders, and the claim satisfaction and lien release provisions of the sale. *Id.* The district court initially held that Stage 1 of the transaction – the sale of the debtors’ assets to the

Purchasers in return for the stock and subscription rights and the creation of replacement liens thereon in favor of the first lien lenders – was “clearly within the scope of authority granted to the bankruptcy court by section 363 of the Bankruptcy Code.” *Id.* at 51.

59. As to Stage 2 – the distribution of the stock and subscription rights on account of the first and second lien debt and elimination of the replacement lien granted in Stage 1 – the court determined that “[n]othing in the language of the relevant subsections of Bankruptcy Code section 363, however, provides the Bankruptcy Court with authority to impair the claim satisfaction rights of objecting creditors or to eliminate the replacement liens.” *Id.* (emphasis added).

60. While not using the term “*sub rosa* plan,” the district court relied heavily on Fifth Circuit authority (cited above) prohibiting *sub rosa* plans, explaining that:

[I]t is well established that section 363(b) is not to be utilized as a means of avoiding Chapter 11’s plan confirmation procedures. Where it is clear that the terms of a section 363(b) sale would preempt or dictate the terms of a Chapter 11 plan, the proposed sale is beyond the scope of section 363(b) and should not be approved under that section.

Id. at 52. The district court then concluded that Stage 2 of the transaction, in directing the “distribution to creditors of the consideration paid for [the debtors’] assets and the termination of liens and other interests, clearly constituted an attempt to determine or preempt plan issues in the context of the Section 363(b) sale and was improper to that extent.” 333 B.R. at 52.

61. Concluding, the district court pointedly observed:

This is a Chapter 11 case. Chapter 11 authorizes the *alteration of objecting creditors’ rights* through the plan confirmation process.... The Bankruptcy Court’s utilization of sections 363(b) and 105(a) to overcome [the objectors’] anticipated objections to an attempt to cram down an equity-based plan of reorganization must be rejected.

Id. at 54 (emphasis added).

62. The Chrysler Restructuring Transaction entails much more than a “Stage 1” transfer of substantially all of the Debtors’ assets in exchange for \$2 billion to the Debtors’ estate for payment to the first lien lenders, the assumption and assignment of executory contracts and leases, and even more than the assumption of a very significant portion of the Debtors’ liabilities. The transaction redirects billions of dollars in value away from the Debtors’ estate (just how many billions is not disclosed) by positioning certain unsecured creditors – the New VEBA and the U.S. Treasury – as majority owners of New Chrysler, and it further channels consideration directly to the New VEBA in the form of the \$4.587 billion note. Such direct distribution of value in the form of new debt and equity issued by New Chrysler, in exchange for the prepetition debt of the New VEBA, and perhaps the U.S. Treasury, deprives the Affected Dealers and Chrysler’s other unsecured creditors whose debts are not being assumed of that value. This certainly “alters” the rights of the Affected Dealers, and, as explained below, “determines or preempts” plan issues.

63. The Chrysler Restructuring Transaction dictates not only the disposition of substantially all of the Debtors’ assets, but also allocates membership interests in New Chrysler, apparently according to some unexplained value assigned to certain prepetition claims held by preferred creditors in conversion of their claims against the Debtors. This is precisely the purpose of a chapter 11 plan. *See* 11 U.S.C. §§ 1123(a)(3) (“a plan shall – specify the treatment of any class of claims or interests that is impaired under the plan”); 1123(a)(5)(B), (J) (“a plan shall – provide adequate means for the plan’s implementation, such as – transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan” or “issuance of securities of the debtor, or of any entity referred to in

subparagraph (B) ..., for cash, for property, for existing securities, or in exchange for claims or interests”).

64. The Debtors thus seek to accomplish by motion what may only be properly achieved through the plan process, without affording the Affected Dealers and other creditors who are not among those favored under the Chrysler Restructuring Transaction with any of the protections of the chapter 11 plan solicitation and confirmation provisions of the Bankruptcy Code. *See, e.g.*, §§ 1122(a) (allowing classification of only like claims); 1125 (requiring disclosure statement containing “adequate information” for solicitation of votes regarding plan); 1126(c) (amount and number thresholds for acceptance by a class of claims); 1129(a)(7) (best interests of creditors test); 1129(a)(11) (feasibility test); 1129(b)(2) (protection against unfair discrimination and unfair and inequitable treatment).

65. Specifically, the Debtors’ use of section 363 to attempt an end-run around the chapter 11 plan process (i) deprives non-favored creditors (such as the Affected Dealers) of sufficient information to determine the implications of the proposed Chrysler Restructuring Transaction on their claims against the Debtors’ estates, (ii) denies creditors an opportunity to assess the extent of discrimination across classes of creditors holding claims of equal priority, and (iii) denies creditors the opportunity to vote on the disposition of substantially all of the Debtors’ assets *bundled with* the allocation of interests in New Chrysler at least in part on the basis of prepetition claims.

66. In order for a sale of substantially all of a debtor’s assets under section 363 to be approved, the debtor must provide all creditors with notice of the proposed transaction. *See In re Naron & Wagner, Chartered*, 88 B.R. 85, 89 (Bankr. D. Md. 1988). According to the court in *Naron*, “[t]his notice should be sufficient to inform all interested parties of the anticipated impact

of the sale on debtor's business and/or anticipated plan. *Id.* at 88. Where the debtor seeks to sell substantially all of its assets and distribute the proceeds outside of a plan of reorganization, "appropriate notice should be a functional substitute for the adequate information which would be contained in a disclosure statement concerning the proposed transaction." *Id.* at 89. *See also In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 983 (Bankr. N.D.N.Y. 1988) ("the importance of notice cannot be underscored for it is the due process component of a § 363(b) transfer in that it gives all parties in interest an opportunity to be heard").

67. The Debtors' disclosure of the Chrysler Restructuring Transaction fails to meet this standard and is in any event patently inadequate. As a result, all of the implications of the proposed Chrysler Restructuring Transaction on the rights and interests of the Affected Dealers are unclear. Foremost among the substantive notice deficiencies is the failure of the Sale Motion to disclose the consideration in exchange for which the prepetition creditors, New VEBA, the U.S. Treasury and the Canadian government, would receive equity in New Chrysler.

68. Moreover, an approval of the Chrysler Restructuring Transaction under section 363 would eliminate the protections afforded dissenting unsecured creditor classes in a cramdown under section 1129(b) that any plan not "discriminate unfairly" and be "fair and equitable." Each dissenting class would be entitled to a determination by the Court that the plan (presumably in form and substance identical to the Chrysler Restructuring Transaction) does not discriminate unfairly against that class. *See* 11 U.S.C. § 1129(b)(1). By seeking to "confirm" a *sub rosa* plan, the Debtors are side-stepping the burden that they would have to appropriately justify (if that were possible) the disparate treatment of holders of claims of equal priority to those of the New VEBA and the U.S. Treasury.

69. Assuming the Debtors could clear the initial hurdle of justifying the disparate treatment of the Affected Dealers and certain other unsecured creditors in favor of the New VEBA and the U.S. Treasury, the Debtors would also have the burden to demonstrate that a plan that embodies the Chrysler Restructuring Transaction is fair and equitable to each dissenting class of creditors. *See id.* The test of whether a plan is “fair and equitable” has two components: (i) the absolute priority rule, and (ii) the rule that no party receive more than the value of its claim. *See generally* 7 Collier on Bankruptcy ¶ 1129.04[4][a] (15th rev. ed. 2009). The Dealer Committee cannot determine the extent to which the fair and equitable rule is being violated because the Debtors have not, pursuant to a plan and disclosure statement, classified the claims against their estates or disclosed the expected recoveries among those claims, but instead sought to implement a *sub rosa* plan under section 363.

70. The approval sought by the Debtors of the Chrysler Restructuring Transaction under section 363 preempts or deprives the Affected Dealers of each of the chapter 11 disclosure and confirmation provisions addressed above, particularly as they relate to the disparate and unfair treatment of creditors by reason of the transaction’s channeling of an undisclosed amount of value to the New VEBA and perhaps the U.S. Treasury. For this reason, among others, the Chrysler Restructuring Transaction cannot be approved under section 363(b).

71. The Chrysler Restructuring Transaction also cannot be sustained under other authority, within or outside of the Second Circuit. Chrysler relies heavily on *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983), and later decisions that stand for the general proposition that a bankruptcy court must determine, based on evidence, that a “good business reason” exists to authorize the sale of an important asset of the estate prior to and outside of a plan of reorganization. *See, e.g.,* Debtors’

Memorandum of Law in Support of the Sale Motion (Doc. No. 191) (the “Sale Mem.”) at 8. However, satisfaction of that standard alone speaks only to the first “stage” of a “two-stage” transaction, such as the transaction in *WestPoint Stevens* and the Chrysler Restructuring Transaction. There may be a good reason in a particular case for a sale that permits the estate to realize value prior to a plan, but if the transaction effects distributions (or, as here, diversions) of value, or provides for other actions that typically occur under a plan, it may be disallowed as a *sub rosa* plan. Indeed, the district court in *WestPoint Stevens*, which struck down the two-stage transaction as a *sub rosa* plan, noted that the bankruptcy court had determined that the *Lionel* standard had been met, and this determination was not challenged on appeal. Yet *WestPoint Stevens* disallowed the *sub rosa* plan in that case. *Lionel* and its progeny in the Second Circuit address only the first hurdle that the Debtors must overcome in this case. *Lionel* is, however, instructive in this matter, given the Second Circuit’s admonition that, “[i]n fashioning its findings, a bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups.” *In re Lionel Corp.*, 722 F.2d at 1071. *See also In re Gulf Coast Oil Corp.*, Case No. 08-50213, 2009 Bankr. LEXIS 313 at * 47 (Bankr. S.D. Tex., Feb. 11, 2009) (“If the sale will not follow the ‘carefully crafted [Congressional] scheme’ by utilizing the ‘balanced set of tools for both the debtor and the creditor [and]... multiparty bargaining’ then it is hard to justify entitling the few lucky parties to the extraordinary benefits that Congress provided for those who do satisfy the statutory plan confirmation requirements.”).

72. Although Chrysler argues strenuously that delay in the approval and consummation of the Chrysler Restructuring Transaction will result in a loss of value to the estate and cause serious economic harm, (Sale Mem. at 9-13), Chrysler does not attempt to justify its effort to side-step the disclosure and plan confirmation process on the ground that

presenting the Chrysler Restructuring Transaction for approval as part of a plan would unduly delay the transaction. Indeed, Chrysler had ample time to negotiate and prepare a plan for filing on day one – as noted above, Chrysler had retained restructuring counsel at least five months before filing and had other advisors available to it at that time.

73. Given these facts, Chrysler’s choice to proceed under section 363, knowing that the breadth of the Chrysler Restructuring Transaction would imperil it as a *sub rosa* plan, suggests that Chrysler recognized that the transaction might never be confirmed consensually or by cramdown under section 1129(b).

74. Chrysler also contends, in various iterations, that the Court should approve the Chrysler Restructuring Transaction because it is the best, if not only, alternative available. *See* Sale Mem. at 16-22 (arguing that Chrysler will receive “fair consideration”; the transaction will maximize its ability to pay claims and preserve going concern value; and is the only transaction that Chrysler’s “principal” constituents and the U.S. and Canadian governments will support). Chrysler’s argument cannot prevail and, indeed, was expressly rejected in *WestPoint Stevens*:

Nor do the Bankruptcy Court’s remarks and findings concerning the centrality of the distribution provisions (and their concomitant implications for practical control of the post-transaction operating entity) to the [purchasers and related parties] and the Bankruptcy Court’s references to an *alternative scenario consisting of forced liquidation or piecemeal asset sales* supply the requisite link to authority for the challenged Sale Order provisions. *The fact that a transaction including a section 363(b) sale of assets may ultimately be in the best economic interests of a debtor’s various constituencies does not authorize the court to ignore the creditors’ rights and procedural requirements of Chapter 11.*

333 B.R. 30 at 51-52 (emphasis added).

75. Chrysler had two choices to seek approval of a transaction in a manner compliant with U.S. bankruptcy law. It could have properly sought approval under section 363 if it had limited the scope of the transaction to a sale with a later distribution under a plan of the

consideration received, or it could have filed a plan to effectuate the far broader Chrysler Restructuring Transaction and subjected it to the disclosure and plan confirmation processes. Chrysler chose neither route. As a result, the Court must not approve the Chrysler Restructuring Transaction under section 363 regardless of the potential consequences suggested by Chrysler.⁵

II. The Timing of The Chrysler Restructuring Transaction Offends Due Process

76. As explained above, the terms of the Chrysler Restructuring Transaction contain unnecessarily punitive timing restrictions that would sacrifice the rights of the Affected Dealers before having a chance to adequately defend themselves.

77. Given the extraordinary nature of the relief sought by Chrysler and the irreparable harm that would be suffered by the Affected Dealers, the extent to which Chrysler has failed to comport with due process is stunning. Chrysler:

- Failed to serve the Sale Motion on the Affected Dealers even though the Sale Motion may be dispositive of the Affected Dealers' contractual rights under their dealer agreements.
- Failed to notify the Affected Dealers that the relief sought in the Sale Motion directly and adversely impacts their rights and interests and may moot their rights to oppose rejection.
- Orchestrated the sequence and timing of the Motion to Reject to provide only three business days' notice between the date on which dealers were notified that their contracts would be the subject of the Motion to Reject and the date to respond to the Sale Motion.
- Provided the first sale-related notice, by regular mail, of the proposed sale and bidding procedures (but *not* the Sale Motion) to the Affected Dealers on May 11.

⁵ Courts routinely make a finding at the time a section 363 sale is approved that the purchaser is a "good faith purchaser" for purposes of section 363(m) of the Bankruptcy Code. *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 389 (2d Cir. 1997). The burden is on the Debtors to establish New Chrysler's good faith. *T.C. Investors v. Joseph (In re M Capital Corporation)*, 290 B.R. 743, 747 (B.A.P. 9th Cir. 2003) ("proponent of section 363(m) good faith has the burden of proof"); *In re W.A. Mallory Company, Inc.*, 214 B.R. 834, 838 (Bankr. E.D. Va. 1997) ("debtor has failed to carry its burden of proof of demonstrating that the sales are proposed in good faith"). The Dealer Committee reserves all rights regarding this issue, including, without limitation, seeking discovery, examination of witnesses at the Sale Hearing, and otherwise.

- Failed to disclose the true nature of the Chrysler Restructuring Transaction as significantly more than a sale of substantially all of Chrysler's assets.
- Failed to disclose, even in transaction documents filed last week, the specific consideration being provided to the New VEBA and the U.S. Treasury in respect of their membership interests in New Chrysler.
- Having had years to devise its scheme to reduce its dealer network, provided the Affected Dealers with virtually no notice and no meaningful opportunity to raise objections or prepare their defense against the Motion to Reject.
- Failed to comply with Rule 7001 of the Bankruptcy Rules in seeking injunctive relief against the Affected Dealers.
- Seeks to dictate and determine the nature and extent of the claims that Affected Dealers may assert in the event the Court authorizes rejection of their dealer agreements.

78. Debtors filed the Motion to Reject on May 14. At that time, objections to the Chrysler Restructuring Transaction were already due on May 19. As explained below, that afforded the Dealer Committee and Affected Dealers only three business days to consult and hire counsel, and attempt to understand, and protect, their rights in conjunction with both the Chrysler Restructuring Transaction and the Motion to Reject.

79. Currently, the hearing on the Chrysler Restructuring Transaction is slated for May 27, whereas the hearing for the Motion to Reject is scheduled for June 3. If the Court approves the Chrysler Restructuring Transaction on May 27 (which is only one day after objections are due to the Motion to Reject), it may, for all practical purposes, dictate the result of the Motion to Reject.

80. If the Court were to approve the Chrysler Restructuring Transaction and deny the Motion to Reject, the Affected Dealers may be left without any meaningful relief. Unless state law otherwise provides, the Affected Dealers may not have any contractual or other relationship with New Chrysler. This would likely prevent the Affected Dealers from being able: (1) to offer

warranties on new vehicles through New Chrysler; (2) to utilize manufacturer's incentives from New Chrysler (placing them at a serious competitive disadvantage with other Chrysler dealers); and (3) to use signage from Chrysler. The Dealer Committee has not yet had an opportunity to fully explore all ramifications attendant in such a scenario, and results may differ based on state law, but the risks are certainly substantial. Prevailing on the Motion to Reject may be a pyrrhic victory if the Affected Dealers' rights were already effectively adjudicated in the disposition of the Sale Motion.

81. To protect their due process rights, this Court should ensure that the Dealer Committee and the Affected Dealers are given adequate time to conduct discovery and develop the record in light of the unprecedented proposed mass franchise termination that the Debtors are seeking. *See, e.g., In re Blast Energy Servs., Inc.*, 396 B.R. 676, 690 (Bankr. S.D. Tex. 2008) (granting continuances and allowing sufficient time for discovery “*to ensure that due process was afforded*”) (emphasis added); *In re La Sierra Fin. Servs., Inc.*, 290 B.R. 718, 732-33 (9th Cir. B.A.P. 2002) (recognizing that due process “requires more than simply that the parties be aware of the litigation, *but also they have the opportunity to prepare adequately for an impending hearing*”) (citations omitted, emphasis added); *In re Timely Secretarial Serv., Inc.*, 987 F.2d 1167, 1171 (5th Cir. 1993) (“Basic principles of due process required the bankruptcy court to give General Electric reasonable notice Indeed, the Supreme Court has recognized that ‘an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action *and afford them an opportunity to present their objections.*’”) (citations omitted, emphasis added); *In re Indesco Int’l, Inc.*, 2005 Bankr. LEXIS 458, at *35-*36 (Bankr. S.D.N.Y. Mar. 25, 2005) (“In the interests of . . . due process . . . the

Court will afford AFA notice and opportunity to be heard with respect to the merits, and reasonable discovery in connection therewith The Court will then need to have an evidentiary hearing”).

82. If the Court approves the Chrysler Restructuring Transaction, the ultimate effect may be to moot the hearing on the Motion to Reject and deprive the Affected Dealers of any meaningful opportunity to be heard, in violation of the U.S. Constitution. *See United States v. Castro*, 243 B.R. at 383 (“the fundamental requisite of due process of law is the opportunity to be heard”) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314). The Court must not countenance such a violation of due process.

III. At a Minimum, A Continuance Must Be Granted In a Way that Protects the Rights of the Affected Dealers

83. Debtors have no one to blame but themselves for structuring the Chrysler Restructuring Transaction and the proposed rejection in the manner that they have. Due process simply demands that the Dealer Committee and the Affected Dealers have a full and fair opportunity to take discovery and be heard before the Court adjudicates the Sale Motion and Motion to Reject. At a minimum, therefore, a continuance must be granted in a way that fully affords the Dealer Committee and Affected Dealers a meaningful ability to protect their rights, which based on Debtors’ current structure of the proceedings, necessitates a continuance of *both* the Sale Motion and the Motion to Reject.

A. The Dealer Committee and Affected Dealers Will Be Irreparably Harmed if the Continuance is Not Granted

84. Several states provide that termination of a franchise or dealership without compliance with the contract or state laws constitutes irreparable harm. *See, e.g.*, Wash. Rev. Code Ann. § 135.065 (“[A]ny violation of this chapter by the grantor is deemed an irreparable

injury to the dealer for determining if a temporary injunction should be issued.”); Mich. Comp. Laws § 445.1535(3) (“presumption of immediate and irreparable harm to the franchisee” where contract contains certain clauses).

85. Chrysler itself recognized the perils of termination, as evidenced by its exemplar contract with Jeep dealers that it attached to Mr. Grady’s declaration. That contract provides for arbitration, and if the dispute concerns the termination of the dealer relationship, “[*Chrysler*] will stay the implementation of the decision to terminate this Agreement. . . until the decision of the arbitrator has been announced.” (Motion to Reject, Second Grady Decl. Jeep Contract, ¶ 9) (emphasis added).

86. This very language was evaluated by the Second Circuit in *Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Corp.*, 992 F.2d 430, 435 (2d Cir. 1993). There, an automobile dealer signed a franchise agreement with Chrysler Corporation’s subsidiary, Jeep-Eagle Sales Corp. (“Eagle Sales”). *Id.* at 431. When Eagle Sales sought to open four new dealerships in the same market area as the original dealer, the dealer sought to arbitrate the legality of such action and, relying on the same contractual language quoted above, sought injunctive relief preventing Eagle Sales from implementing the four new franchises. *Id.* at 432. In reversing the lower court and granting the injunction, the Second Circuit held that the parties’ contract “contemplates that the manufacturer’s decision . . . will cause an existing dealer serious harm, difficult to compensate with money damages” *Id.* at 435. Moreover, the court recognized that “[m]ajor disruption of a business can be as harmful as termination, and a ‘threat to the continued existence of a business can constitute irreparable injury.’” *Id.* at 435. Citing to original dealer’s reduced sales and the number of customers entering its showroom, the court held that “appellant has

demonstrated that the four new Jeep-Eagle dealerships seriously threaten its continued existence and that money damages are inadequate compensation for such loss.” *Id.* at 436.

87. When a dealership is terminated, as Chrysler seeks to do *en masse* by June 9, it generally renders the dealer unable to sell new cars under many states’ laws. Even if the dealer has an inventory of new cars, it will be unable to sell them with a warranty (or any manufacturer incentives). (See Taylor Decl. at ¶ 8; Archer Decl. at ¶ 9; Curry Decl. at ¶ 7; Parks Decl. at ¶ 10; Spitler Decl. at ¶ 3; Walker Decl. at ¶ 7; Willey Decl. at ¶ 8). Dealers will immediately have to terminate employees, with many dealers employing 50 or more employees. (See Walker Decl. at ¶¶ 4, 5; Parks Decl. at ¶ 8; Curry Decl. at ¶ 8; Archer at ¶ 5).

88. Closing the dealership negatively impacts customer relations, and dealer goodwill may forever be lost. Customers may not have anywhere to turn for questions about warranties, repairs, or other matters.

89. Monetary damages (particularly monetary damages against an insolvent company) provide no substitute for the harm that a dealership will face if it is improperly terminated.

90. The Second Circuit recognized this very point in the context of an attempt by Ford to terminate a dealer several years ago:

Ford's contention that Semmes failed to show irreparable injury from termination is wholly unpersuasive. Of course, Semmes' past profits would afford a basis for calculating damages for wrongful termination, and no one doubts Ford's ability to respond. But the right to continue a business in which William Semmes had engaged for twenty years and into which his son had recently entered is not measurable entirely in monetary terms; the Semmes want to sell automobiles, not to live on the income from a damage award. See *Madsen v. Chrysler Corp.*, 261 F. Supp. 488, 507 (N.D. Ill. 1966), vacated as moot, 375 F.2d 773 (7th Cir. 1967). Moreover, they want to continue living. As Judge Goodrich said, a "judgment for damages acquired years after his franchise has been taken away and his business obliterated is small consolation to one who, as here, has had a Ford franchise" for many years, *Bateman v. Ford Motor Co.*,

302 F.2d 63, 66 (3d Cir. 1962). As against this, the hardship to Ford in continuing the Semmes dealership *pendente lite* was relatively small.

Semmes Motors, Inc. v. Ford Motor Co., 429 F.2d 1197, 1205 (2d Cir. 1970) (internal quotations and citations omitted). *See also Roso-Lino Beverage Distributors, Inc. v. Coca-Cola Bottling Co.*, 749 F.2d 124, 125-26 (2d Cir. 1984) (granting preliminary injunction prohibiting Coca-Cola's termination of distributorship upon finding that "[t]he loss of [plaintiff's] distributorship, an ongoing business representing many years of effort and the livelihood of its husband and wife owners, constitutes irreparable harm. What plaintiff stands to lose cannot be fully compensated by subsequent monetary damages."); *Colonial Ford, Inc. v. Ford Motor Co.*, 1991 U.S. Dist. LEXIS 14421, at *4, *6 (W.D.N.Y. 1991) (finding Ford dealership made showing of irreparable harm where "[t]he bulk of [the dealership's] gross profits derive from its position as a Ford dealership. Termination of that relationship would seriously jeopardize [the dealership's] continuing viability as a business enterprise."); *Automotive Electric Service Corp. v. Association of Automotive Aftermarket Distributors*, 747 F. Supp. 1483, 1514 (E.D.N.Y. 1990) (granting permanent injunction and finding that "[t]his is not a case of mere lost profits, but rather the basic existence of a seventy year old business may be threatened. . . . Like the plaintiffs in *Semmes*, the Judelsons have a virtually unmeasurable interest in continuing to operate their business and a damage award would, in this Court's view, be inadequate to afford complete relief.").

91. The same points in the cases cited above apply here with even greater force, since it is not just one dealer being terminated, but nearly a thousand.

B. Debtors Will Not Be Harmed by Permitting the Dealer Committee and the Affected Dealers an Opportunity to Defend Themselves

92. The Dealer Committee is not seeking a continuance for the sake of delay. Indeed, within the next few days, it will be serving a first set of discovery requests and deposition notices on Chrysler and the other parties to the Chrysler Restructuring Transaction in furtherance of this Objection and its anticipated opposition to the Motion to Reject. *See, e.g., In re Khachikyan*, 335 B.R. 121, 127 (9th Cir. B.A.P. 2007) (“Tactically, one desiring discovery needs to be in the position of being able to argue that discovery was timely propounded, is appropriate to the situation, and that the contested matter should not be resolved until the required responses are provided. The court has discretion to shorten response times or to continue the hearing to permit responses to appropriate discovery that has been timely requested.”). The Dealer Committee has gone to great lengths to serve discovery within a few days of receipt of the Motion to Reject. With cooperation from Chrysler, discovery can be completed expeditiously.

93. Any urgency suggested by Debtors in the Motion to Reject is manufactured, and they will incur no harm if the proposed rejection does not take place on the timetable that they desire. For example, Chrysler does not incur any costs, beyond nominal ones, in connection with the Affected Dealers. That is because Chrysler insists that the Affected Dealers pay for everything.

94. In his declaration, Mr. Walker details the types of costs that dealers must bear. First, they must pay for all inventory that they receive from Chrysler. (*See* Walker Decl. at ¶ 3). Second, they must pay for all training, salaries, and benefits of all of their employees. (*Id.*). Third, dealers must pay for all real estate, showrooms, and signage. (*Id.*).

95. If a particular dealer is not profitable, it does not *cost* Chrysler anything. (*See* Taylor Decl. at ¶ 3; Parks Decl. at ¶ 4; Curry Decl. at ¶ 3; Archer Decl. at ¶ 3; Walker Decl. at ¶ 3; Willey at ¶ 3).

96. In the Motion to Reject, Chrysler strains (and ultimately fails) to explain why it is truly necessary to reject the contracts of the Affected Dealers. It vaguely alludes to “oversight,” “processes,” and “procedures” that it prefers to avoid. (Motion to Reject, at ¶ 15). Such justifications are couched in generalities and vagueness; they beckon scrutiny through the discovery process. If Chrysler were actually suffering concrete harm by perpetuating its relationships with the Affected Dealers, one would have expected it to substantiate that point, especially after spending years allegedly determining how to reduce its dealer network. *See also Semmes*, 429 at 1205 (“As against this, the hardship to Ford in continuing the Semmes dealership *pendente lite* was relatively small.”).

97. A continuance will not harm the Debtors, and, in fact, proceeding forward with the Chrysler Restructuring Transaction may well end up causing serious harm to the Debtors’ estates. Contrary to the Debtors’ bald assertions that rejection of the dealer agreements gives rise to a nonpriority prepetition claim (Motion to Reject at ¶ 61-63), claims arising from the state Dealer Laws (as defined in the Motion to Reject) must be accorded administrative priority. Under *Reading Co. v. Brown*, 391 U.S. 471, 484 (1968), claims “arising from acts committed by the debtor in possession which give rise to tort liability are accorded administrative expense status.” *Houbigant, Inc. v. ACB Mercantile (In re Houbigant, Inc.)*, 188 B.R. 347, 356-57 (Bankr. S.D.N.Y. 1995). And there is no question that violations of statutory rights, including violations of the termination provisions of state dealer laws, are torts. *Midwest Great Dane Trailers v. Great Dane Ltd. Pshp.*, 977 F. Supp. 1386, 1395 (D. Minn. 1997) (breaching a

“statutory duty” regarding termination under a Minnesota dealer’s statute was a tort); *In re Charlesbank Laundry, Inc.*, 755 F.2d 200, 203 (1st Cir. 1985) (“an intentional act which violates the law” should receive priority); *see also In re Caldor, Inc.*, 240 B.R. 180, 195 (Bankr. S.D.N.Y. 1999) (rejecting administrative claim status because the debtor “simply breached a contract” and did not “violate[] any state law”). While a breach of contract may normally be deemed a prepetition claim, a debtor-in-possession’s violation of a statutory duty under state law is a tort that creates an administrative claim.

98. This result flows naturally from the post-filing decision of both Chrysler and New Chrysler to operate the business without the Affected Dealers. That violation of the state Dealer Laws was merely incidental to its long-term business decisions. *Mass. Div. of Empl. and Training v. Boston Reg'l Med. Ctr. (In re Boston Reg'l Med. Ctr.)*, 291 F.3d 111, 124-25 (1st Cir. 2002) (“Payments in lieu are costs incident to operation of a business -- or, at least, to operation of a nonprofit organization that has not chosen to make contributions.”). Chrysler cannot escape the natural consequences of its economic decisions after filing. *See, e.g., Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434, 438 n.4 (5th Cir. 1998) (“[T]he trustee likely could have avoided the need to plug the wells by resuming production, but made a rational economic calculation to cease production. Such a calculation, however, must include the cost of plugging operations as a cost of ceasing production.”); *see also In re White Crane Trading Co.*, 170 B.R. 694, 702 (Bankr. E.D. Cal. 1994) (a debtor-in-possession must “manage and operate the debtor’s property and business in compliance with state laws -- good, bad, and indifferent -- that apply outside of bankruptcy”). The planned dealer network restructuring in violation of state law will result in tort liability by Chrysler to the Affected Dealers for which administrative expense priority will be accorded.

C. There Are Novel and Serious Legal Issues That Warrant Both Full Exploration And Factual Development

99. Chrysler freely acknowledges that “[t]here is little precedent for the bankruptcy of a major OEM. . . .” (Motion to Reject, at ¶ 20). Against that backdrop, it expects this Court to enter an order on, at most, a couple of weeks notice that irreparably impacts the Affected Dealers and could be precedential in the event of a subsequent bankruptcy of another major automobile manufacturer.

100. In addition to the reasons explained above, there is a compelling need for this Court to permit discovery and have a full hearing on, at a minimum, five critical legal issues: (1) whether the Chrysler Restructuring Transaction constitutes a *sub rosa* plan and, thus, may not be approved; (2) whether, in light of all of the evidence, Debtors have fulfilled their burden of establishing that all of the Affected Dealers’ contracts should be rejected; (3) whether the litany of state Dealer Laws that are designed to protect dealers from adverse actions by parties such as Chrysler are enforceable in these chapter 11 cases; (4) whether, if the Court finds any basis for preemption, 28 U.S.C. § 959 mandates the application of state law; and (5) whether, preemption of the Dealer Laws notwithstanding, the Affected Dealers have viable claims under the Automobile Dealers’ Day in Court Act, 15 U.S.C. § 1221, *et seq.* Additional time may also permit state agencies or attorneys general the opportunity to be heard on these critical, and novel, questions (since Chrysler seeks to foreclose their rights as well).

1. Chrysler Will Not Be Able to Prove that Rejection Is Warranted

101. As an initial matter, Chrysler assumes in the Motion to Reject that the standard for determining rejection under Section 365 of the Bankruptcy Code is whether the rejection of the agreements with the Affected Dealers will benefit the Debtors’ estates and is an exercise of sound business judgment by the Debtors (Motion to Reject at ¶¶ 19, 43). Yet, Chrysler

acknowledges that “[t]here is little precedent for the bankruptcy of a major” automobile manufacturer. (*Id.* at 8). As such, the standard this Court should apply in determining whether to reject the agreements with the Affected Dealers is not as routine as Chrysler depicts.

102. In *National Labor Relations Bd. v. Bildisco*, the Supreme Court held that the standard for determining the rejection of collective bargaining agreements should be stricter than the traditional “business judgment” standard, even though there was nothing in Section 365 indicating that there should be a different standard for collective bargaining agreements. 465 U.S. 531, 523-24 (1984), *superseded by statute*, 11 U.S.C. § 1113.

103. The Court found that because of the special nature of the rights created for workers by collective bargaining agreements, a bankruptcy court should not reject collective bargaining agreements unless the debtor can show that the collective bargaining agreement burdens the estate and that after careful scrutiny, the equities balance in favor of rejecting the contract. 465 U.S. at 525-26. In fashioning this standard, the Court found that the bankruptcy court must balance the interests of the affected parties (including the debtor, creditors, and employees) and that in striking the balance, the court should consider both the type and the degree of hardship faced by each party. *Id.* at 527. Moreover, the Court stated that the bankruptcy court “must have great latitude to consider any type of evidence relevant to” the issue of rejection. *Id.*

104. Like the special rights created by collective bargaining agreements, the dealer agreements that the Debtors are seeking to reject create special rights for the Affected Dealers by virtue of the state Dealer Laws. The Dealer Laws are specifically intended and designed to protect the important rights of dealers in connection with, among other things, the termination of franchise agreements. These laws recognize the imbalance in the bargaining power between

automobile manufacturers and dealers, as well as the extreme hardship that dealers would incur if automobile manufacturers were able to terminate franchise agreements at will without any further obligations.

105. Given the special rights created for the dealers under the state Dealer Laws, this Court should apply a standard similar to that set forth in *Bildisco* to determine whether to reject the agreements with the Affected Dealers.

106. However, regardless of whether this Court applies the “business judgment” standard or the stricter standard set forth in *Bildisco*, the Debtors will not be able to prove that rejection is warranted.

107. Indeed, even under the “business judgment” standard, motions to reject contracts under Section 365(a) of the Bankruptcy Code are not rubber-stamped by bankruptcy courts as Debtors suggest. Rather, a debtor’s business judgment to reject a contract must undergo careful scrutiny to ensure that it will in fact be in the best interests of the unsecured creditors of the bankruptcy estate, and will not result in disproportionate harm to the non-debtor party to the contract. *See, e.g., The Monarch Tool & Mfg. Co. v. Monarch Prod. Sales Corp. (In re Monarch Tool & Mfg. Co.)*, 114 B.R. 134, 137 (Bankr. S.D. Ohio 1990); *In re Petur U.S.A. Inst. Co., Inc.*, 35 B.R. 561, 563-64 (Bankr. W.D. Wash. 1983); *In re Midwest Polychem, Ltd.*, 61 B.R. 559, 562 (Bankr. N.D. Ill. 1986) (recognizing that judicial approval of contract rejection is not a “rubber stamp,” balancing equities when assessing business judgment, and disallowing rejection that would not necessarily have benefited the debtor’s unsecured creditors and could have “mortally wounded” the counterparty). *See also In re Chipwich, Inc.*, 54 B.R. 427, 431 (Bankr. S.D.N.Y. 1985) (authorizing rejection of two licensing agreements where there was no showing that the non-debtor would be “damaged disproportionately” and noting rejection would not force non-

debtor out of business); *Robertson v. Pierce (In re Chi-Feng Huang)*, 23 B.R. 798, 801 (B.A.P. 9th Cir. 1982) (rejection involves a balancing of interests such that the court should refuse to authorize rejection where the non-debtor would be damaged disproportionately to the benefit to be derived by the general creditors); *Infosystems Tech., Inc. v. Logical Software, Inc.*, C.A. No. 87-0042, 1987 U.S. Dist. LEXIS 6285, at *2-4 (D. Mass. Jun. 25, 1987) (citing *Huang*, *Midwest Polychem*, *Chipwich*, and *Petur* in reversing bankruptcy court's authorization of rejection of distributorship agreement under "bad faith, whim, or caprice" standard, and ordering the court to consider whether rejection will benefit general unsecured creditors, which includes balancing of interests and whether disproportionate harm would result to non-debtor).

108. In *Monarch Tool*, the debtor manufactured coin inserting mechanisms for vending machines, which were sold by distributors pursuant to exclusivity agreements. 114 B.R. at 135. The debtor sought to reject the distribution agreement with one of its distributors, claiming that it had insufficient funds to meet payroll and that if the contract was not rejected the debtor would be forced to liquidate. *Id.* In considering the motion, the court pointed out that "a Chapter 11 debtor's right to reject executory contracts is not unlimited." *Id.* at 137. Rather, "[d]isproportionate damage to the other party to the contract provides a ground for disapproving rejection." *Id.* In disapproving the rejection, the court determined that this factor was paramount, in light of the exclusive distributorship arrangement: "Quite simply, if rejection is permitted here, Distributor will be ruined." *Id.*

109. Similarly, in *Petur*, the debtor sought to shed a 20-year license agreement granting the non-debtor the exclusive right to use, manufacture, assemble, and sell its products in Canada. 35 B.R. at 562. The debtor claimed that the agreement was the single biggest cause of its financial problems and estimated that rejecting the agreement would enable it to reorganize

and pay off its creditors within two years. *Id.* The court found that rejecting the contract based upon the non-profitability of the arrangement and the possibility of obtaining better profits constituted a proper exercise of business judgment. *Id.* at 563. Based upon “legal and equitable considerations,” however, the court refused to authorize the rejection because it would force the non-debtor out of business: “we are dealing with the actual ruination of an otherwise profitable, successful and ongoing business. Equity will not permit such a result.” *Id.* at 563-64 (citing *Chi-Feng Huang*, 23 B.R. at 801).

110. As in *Monarch* and *Petur*, rejection of the dealership agreements will put many of the dealerships on Chrysler’s rejection list out of business. (See Curry Decl. at ¶ 5; Parks Decl. at ¶ 8; Taylor Decl. at 6; Walker Decl. at ¶ 4). For those dealerships with non-Chrysler brands to continue selling, the harm resulting from rejection will still disproportionately affect them. Indeed, the rejection will result in a swift and permanent reduction of a large proportion of their sales. Debtors cannot seriously contest the dire impact rejection will have on their dealerships, as shown by their failure to address it in the motion or the Second Grady Declaration.

111. Debtors also fail to provide an explanation of how the unsecured creditors of the Estate will benefit by these rejections. Instead, Debtors acknowledge that these rejections will result in hundreds of claims for breach of contract by the rejected dealerships. (Motion to Reject, ¶¶ 61-63). As a consequence, the rejections would actually harm the Estate by diluting the already existing claims (and the effect is much worse once the claims are properly classified, as explained above, as administrative claims).

112. Debtors’ arguments that the rejections will aid New Chrysler are vague and unsupported by any concrete and verifiable evidence (and what little evidence the Debtors do proffer should be subject to discovery). Debtors assert that reducing the size of the dealership

network will reduce costs to New Chrysler because it will decrease inefficiencies in the distribution chain and strengthen the remaining dealers, thereby allowing them to enhance the Chrysler “consumer experience.” The only support for these sweeping claims is found in the Second Grady Declaration. The Second Grady Declaration, however, also contains nothing more than broad and conclusory statements, and is devoid of any specific economic analysis or studies. For example, the Motion to Reject and Second Grady Declaration reference performance and planning factors applied in determining which dealerships to terminate, but they fail to provide that data and analysis.

113. Therefore, there is no credible evidence that the rejections will actually help New Chrysler anytime in the foreseeable future. Accordingly, Debtors will not be able to demonstrate that they have exercised sound business judgment in seeking to reject the dealership contracts. Debtors have not shown with any credible evidence that the Estate will be helped by the rejection of the agreements. To the contrary, Debtors’ motion shows that the Estate will be harmed by the resulting dilution of the other unsecured creditors’ claims. Debtors’ claim that New Chrysler will be benefited rests on nothing more than bare assertions. Finally, it cannot be disputed that rejection of the dealership agreements will disproportionately harm the rejected dealerships and result in many of them going out of business.

2. State Dealer Protection Laws Are Not Preempted

114. Chrysler insists that the state “Dealer Laws” are preempted by section 365 of the Bankruptcy Code because it grants the ability to accept or reject pre-petition contracts. But that section says nothing about abrogating statutory obligations that are independent of those contracts. Dealer Laws create statutory rights and statutory causes of action that, at least where termination is concerned, render the contracts largely unenforceable. *See, e.g.,* Tex. Occ. Code §

2301.453 (“Notwithstanding the terms of any franchise . . .”). Chrysler’s proposed rejection of the contracts is largely irrelevant to the preemption and damages question. Most of the damages claims of the Affected Dealers under the Dealer Agreements will be fully addressed by their statutory rights under the Dealer Laws.

115. The real question is whether Chrysler’s interest in a painless bankruptcy (for itself) should preempt all of the applicable state laws in a highly regulated industry. Chrysler relies heavily on *Volkswagen of Am., Inc. v. Dan Hixson Chevrolet Co (In re Dan Hixson Chevrolet Co.)*, 12 B.R. 917, 921 (Bankr. N.D. Tex. 1981), to argue that it has unlimited discretion to ignore any state law obligations. But rather than ignoring the Texas franchise law, *Dan Hixson* only stopped parallel proceedings before a Texas agency through the automatic stay. Though it ostensibly held that section 365 preempted the Texas statute, the court recognized that it and the state agency had the same policies, objects, and powers. *Id.* at 923. “Preemption” in *Dan Hixson* meant no more than that the bankruptcy court would decide the issues. The rest of Chrysler’s authority regarding Dealer Laws is even less apt. *In re Tom Stimus Chrysler-Plymouth, Inc.*, 134 B.R. 676, 678-79 (Bankr. M.D. Fla. 1991), said no “discussion” was necessary on preemption -- and thus can have no persuasive authority. *In re City of Vallejo*, 403 B.R. 72 (Bankr. E.D. Cal. 2009), is similarly devoid of reasoning, beyond a reference to section 365 and the Supremacy Clause. Not one of these cases addresses 28 U.S.C. § 959, which requires a debtor in possession to follow state law.

116. Every state currently has a statute that restricts a car manufacturer’s ability to terminate a dealer agreement. Half of the states expressly require a dealer’s failure to comply with a provision of the franchise before termination is justified. The others analyze a broad range of factors that must be proven to a court or specialized agency. An unjustified termination

often means a manufacturer must buy-back unsold new vehicles, parts, accessories, specialized tools and equipment. *See, e.g.*, Ark. Code Ann. 23-112-403(a)(2)(K); Cal. Bus. & Prof. Code § 20035; 6 Del Laws c. 49, § 4907-4908; Fla. Stat. § 320.3205(3); New York L. (Vehicle & Traffic) 17-A § 463(o)(1); 63 Penn. Stat. § 818.17; Tex. Occ. Code § 2301.465; Wash. Rev. Code Ann. § 19.100.180(2)(i). Other states impose similar buy-back requirements for terminations with or without cause. *See, e.g.*, Conn. Gen. Stat. § 42-133f(c); Haw. Rev. Stat. § 482E-6(3); Md. Code Ann. Com. Law §11-1304; Mich. Comp. Laws § 445.1527(d); Wis. Stat. Sec. 135.045. As mentioned previously, buy-back is especially important because the dealer can no longer sell new cars as “new” and will no longer need many of the parts.

117. The Dealer Laws reflect a strongly-held public policy that protect decades-long investments in a brand and in a community and represent a state’s fundamental public policy. *Dayan v. McDonald's Corp.*, 125 Ill. App. 3d 972, 992 (1984) (Illinois franchise act is “an embodiment of the applicable public policy”); *Shell Oil Co. v. Marinello*, 307 A.2d 598 (N.J. 1973) (provision in dealer agreement giving absolute right to terminate on ten days’ notice against public policy); *Ashland Oil, Inc. v. Donahue*, 223 S.E.2d 433 (W. Va. 1976) (same); *Britelink, Inc. v. Telecorp PCS, Inc.*, 2004 U.S. Dist. LEXIS 29683, 23-25 (E.D. Ark. May 7, 2004) (“protections for franchisees . . . reflect fundamental public policy decisions”). Indeed, in some states, a willful violation of the dealer laws can result in a criminal felony action. *Electrical & Magneto Serv. Co. v. AMBAC Int'l Corp.*, 941 F.2d 660, 663 (8th Cir. 1991). Many others contain explicit anti-waiver clauses to protect dealers. *Gabana Gulf Distrib. v. Gap Int'l Sales, Inc.*, 2006 U.S. Dist. LEXIS 59799, 19-20 (N.D. Cal. Aug. 14, 2006) (California franchise statute “does not permit stipulations that waive the requirements of the statute”); Wis. Stat. 135.025(3) (same); Rhode Island Gen. L. 35-5.1-14 (same).

118. Dealer Laws also allow other types of remedies for the termination of a dealership, including goodwill, lost profits, and double or treble damages. *See, e.g.*, Conn. Gen. Stat. §42-133 (g)(a); Haw. Rev. Stat. § 482E-6; Ill. Comp. Stat. ch. 815, 705/26; Ind. Code Ann. §23-2-2.7-4, Iowa Code § 523H.6, 523H.13; Minn. Stat. Ann. § 80C.17(3); Miss. Code Ann. § 75-24-57; Mo. Rev. Stat. § 407.410; Neb. Rev. Stat. § 87-409; N.J. Stat. Ann. § 56:10-10; Ohio Rev. Code § 4517.65; Va. Code Ann. § 13.1-571; Wash. Rev. Code Ann. § 19.100.190(3); Wis. Stat. § 135.06. Perhaps most importantly, these laws provide the procedural protections of 60 or 90 days notice of termination, which allows dealers either to prepare themselves or to begin proceedings to prevent closure. These state policy interests are paramount to Chrysler’s interest in closing down all of the Affected Dealers in three weeks.

119. Chrysler also argues the Dealer Laws are preempted through field preemption and conflict preemption.⁶ Field preemption, which occurs where “Congress evidences an intent to occupy a given field” *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984), cannot apply. Chrysler presents no evidence of a Congressional intent to occupy or eliminate the field of protecting local dealers. The only evidence of intent is Congress’ express desire *not* to affect the consumer protection laws that are very similar to the Dealer Laws. H.R. Rep. No. 595, 95th Cong., 1st Sess. 343 (1977); reprinted in 1978 U.S. Code Cong. & Admin. News 5963, 6299 (consumer protection laws are “regulatory powers” exempt from the automatic stay). Chrysler’s arguments for field preemption, complexity and uniformity, are generalities applicable to every state law. Yet the Supreme Court warns that “Congress did not intend for the Bankruptcy Code to pre-empt all state laws.” *Midlantic Nat’l Bank*, 474 U.S. at 505 (1986).

⁶ Chrysler appears to concede that express preemption does not apply, which is correct. There is no command anywhere in the Bankruptcy Code that the Dealer Laws be preempted.

120. Similarly, Chrysler's argument for conflict preemption rests on a misunderstanding of the purpose of bankruptcy. Conflict preemption applies where state law prevents "the accomplishment and execution of the full purposes and objectives of Congress." *Barnett Bank, N.A. v. Nelson*, 517 U.S. 25, 31 (1996). Chrysler argues that *any* limitation on its ability to *immediately* end all commercial contact with the Affected Dealers is preempted, regardless of the health and welfare of the community. As explained above, immediate termination will result in unnecessary bankruptcies, unemployment, and a waste of cars, tools, and inventory. Affected Dealers will lose millions to save Chrysler pennies. This is wholly inconsistent with the purpose of the Bankruptcy Code "to minimize a fiscal chaos and disruption, not to aggravate it." *In re Friarton Estates Corp.*, 65 B.R. 586, 594 (Bankr. S.D.N.Y. 1986) (citation omitted). "Congress's purpose in enacting the Bankruptcy Act was not to mandate that every company be reorganized at all costs." *Baker & Drake, Inc. v. Public Serv. Comm'n (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1354 (9th Cir. 1994).

121. There is no conflict between the procedures in the Dealer Laws and the Bankruptcy Code. Dealer Laws create fair and equitable procedures for termination, including the disposition of cars, accessories, and tools that are valuable to Chrysler but have little value for Affected Dealers. As they are sold at rock-bottom prices, Chrysler will have engineered a large transfer of wealth from the Affected Dealers to the remaining dealers. There is no conflict between procedures meant to ensure a fair termination and the Bankruptcy Code. For example, *Robinson v. Michigan Consol. Gas Co.*, 918 F.2d 579, 588 (6th Cir. 1990), refused to preempt state law procedures for termination of utility service, even though the Code allows for termination: "Although 11 U.S.C. § 366(b) does not stand in the way of utility termination in this

case, it does not control the procedure by which such termination may occur. It does not, therefore, preempt state and municipal procedural regulations.”

122. Finally, under no theory of preemption could Chrysler be exempt from state law when creating the list of Affected Dealers, such as if it retaliated against certain dealers. *Ford Motor Credit Co. v. Garner*, 688 F. Supp. 435, 445 (N.D. Ind. 1988) (franchisor must not retaliate when choosing which franchisees to close). State laws therefore specifically bar consideration of metrics that Chrysler appeared to use, such as advertising, parts ordering, and carrying other lines when deciding whether to close a franchise. *See* 63 P.S. § 818.12(6) (“Refrain from participation in the management of, investment in or the acquisition of any other line of new vehicle or related products.”); Ark. Stat. 23-112-403(a)(1) (cannot coerce dealers to ordering parts or participate in advertising programs); *see also* Hawaii Rev. Stat. § 482E-6(2)(C) and (H); Wash. Rev. Code § 19.100.180(2)(c) and (i); Iowa Code, Title XIII, § 523H.8. Chrysler has disclosed only a very few details. It lists a few factors, including “other,” without any indication as to how each was measured or how much weight it was given.

3. Even if Otherwise Preempted, State Laws Are Saved by 28 U.S.C. § 959

123. Regardless of the general preemptive reach of the Bankruptcy Code, Congress has refused to allow debtors to violate important state laws with impunity. Congress enacted 28 U.S.C. § 959 as a specific order to debtors to operate “according to the requirements” of state law. *See Midlantic Nat'l Bank v. New Jersey Dep't of Environmental Protection*, 474 U.S. 494, 505 (1986) (in addition to other statutes, Section 959 shows that “Congress did not intend for the Bankruptcy Code to pre-empt all state laws that otherwise constrain the exercise of a trustee's powers”). This statute curtails an overly aggressive use of the Bankruptcy Code (it is a *limitation* on the Code, after all) to run roughshod over state laws, and its power is at its apex

when requiring debtors to comply with statutes based on public policy, such as consumer protection laws. *In re White Crane Trading Co.*, 170 B.R. 694, 705 (Bankr. E.D. Cal. 1994) (“Since section 959(b) admits no exceptions, the court cannot carve out an exemption from state [consumer protection] law.”). As discussed above, state Dealer Laws embody some of the most important public policies of state law.

124. In considering the reach of Section 959, courts often look to the “police and regulatory power” exception under 11 U.S.C. § 362(b)(4). *In re Friarton Estates Corp.*, 65 B.R. 586, 590 (Bankr. S.D.N.Y. 1986) (considering both § 959 and § 362 to resolve the “apparent conflict between state and federal law”); *In re Synergy Dev. Corp.*, 140 B.R. 958, 961 (Bankr. S.D.N.Y. 1992) (same). Limiting Section 959 to the reach of Section 362 interprets it into redundancy, but the illustration is helpful because “[c]onsumer protection is included in the ambit of the [state] government’s police and regulatory powers” under § 362(b)(4). *In re Synergy Dev. Corp.*, 140 B.R. at 961; H.R. Rep. No. 595, 95th Cong., 1st Sess. 343 (1977); reprinted in 1978 U.S. Code Cong. & Admin. News 5963, 6299 (same). And consumer protection laws are parallel in many respects to the Dealer Laws.

125. In both situations, a sophisticated, powerful party provides a non-negotiable form contract to a party with little bargaining power. In response, state legislatures have enacted strong protections for both consumers and automobile dealers. *Shell Oil Co. v. Marinello*, 63 N.J. 402, 409 (1973) (franchise statute “reflects the legislative concern over long-standing abuses in the franchise relationship”); *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.*, 1992 Ohio App. LEXIS 4883, at *5 (Sept. 24, 1992) (“Against a backdrop of abusive and unfair franchise practices by the powerful automobile manufacturing industry, the federal government and many states enacted motor vehicle franchise legislation to protect motor vehicle dealers from such

abuses and essentially change the balance of economic power between these enterprises.”). This strong public policy of giving dealers the same protections as consumers is the basis of an important regulatory scheme, whether recognized under Section 959 or Section 362.

126. At a minimum, the mixed federal policies of the Bankruptcy Code and Section 959 caution that this Court must consider the interests of the states. This is especially so when the state interest is so high -- ignoring state laws will affect tens of thousands of employees and their families and communities in all 50 states.

127. Ironically, Chrysler’s focus on closing the dealerships *immediately* violates the state laws that are most exempt from preemption. The notice provisions in the Dealer Laws are purely regulatory. They provide fairness and social order and cannot be preempted by the Bankruptcy Code. Those statutes help employees find new jobs, avoid fire-sale liquidations (before the dealerships lose their licenses to sell new cars), and allow time to re-tool for a different business model. *Electrical & Magneto Serv. Co. v. AMBAC Int’l Corp.*, 941 F.2d 660, 664 (8th Cir. 1991) (“the ninety-day notice requirement . . . represents fundamental public policy of Missouri”); *Britelink, Inc. v. Telecorp PCS, Inc.*, 2004 U.S. Dist. LEXIS 29683, 23-25 (E.D. Ark. May 7, 2004) (“notice provisions” “reflect[] public policy which is fundamental under these circumstances”). This is especially important here because Chrysler pressured dealers it intended to close down to buy new cars in the months leading up to bankruptcy.

128. Finally, the complexity and novelty of the issues also implicate due process concerns of notice and an adequate opportunity to be heard. *In re Victory Mkts.*, 221 B.R. 298, 310 (B.A.P. 2d Cir. 1998) (due process applies in the bankruptcy process).

4. The Bankruptcy Code Does Not Preempt the Federal Automobile Dealers' Day in Court Act

129. The Court has further grounds for denying the Motion to Reject because, even if the Dealer Laws are preempted, such relief may contravene the Automobile Dealers' Day in Court Act, 15 U.S.C. § 1221, *et seq.*, ("Dealers' Act"), which is not preempted. The Dealers' Act is a federal remedial statute enacted to redress the economic imbalance and unequal bargaining power between large automobile manufacturers and local dealerships, protecting dealers from unfair termination and other retaliatory and coercive practices. *See, e.g., In re Frank Meador Buick*, 13 B.R. 841, 844 (W.D. Va. 1981) ("The Dealers' Day in Court Act is a remedial statute aimed at curtailing coercive behavior by manufacturers in dealing with their franchise's dealers."). The Dealers' Act authorizes an action to be brought against an automobile manufacturer engaged in interstate commerce when the manufacturer has failed "to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer" 15 U.S.C. § 1222. The Act defines the term "good faith" as "the duty of each party to any franchise . . . to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party. . . ." 15 U.S.C. § 1221(e).

130. This Court should permit discovery in order to determine whether the Dealer Committee and Affected Dealers may successfully oppose the Motion to Reject based on the Dealers' Act. *See In re Frank Meador Buick*, 13 B.R. at 844-46 (recognizing that "[t]he existence of coercion or intimidation is a factual determination in each case," and finding that the manufacturer engaged in "coercive conduct, lacking in good faith as that term is defined under 15 U.S.C. § 1221(e)").

D. The Motion to Reject Overreaches and Seeks Sweeping, Unsupported Relief.

131. Another reason why closer scrutiny of the Motion to Reject is warranted is that the Motion to Reject does not just seek a determination from this Court authorizing the rejection of certain agreements with the Affected Dealers. Rather, in the guise of a motion under Section 365 of the Bankruptcy Code, it seeks far-reaching and unprecedented relief, including: (1) a declaration that all of the Debtors' "unperformed obligations" under the rejected agreements give rise to dischargeable prepetition damages claims (Motion to Reject at ¶¶ 61-63); (2) a declaration that a rejection of the agreements is the "conclusion of the commercial relationship and cuts off the rights of the Affected Dealers thereunder, except to the extent that the Affected Dealers may wish to pursue rejection damages in this Court." (Motion to Reject at ¶ 66); and (3) injunctive relief for New Chrysler and the remaining Dealers -- in addition to the Debtors -- against the Affected Dealers and unidentified Governmental Entities under Section 525 of the Code (Motion to Reject at ¶¶ 57-60).

132. First, as discussed above, claims arising from breaches of the state Dealer Laws are entitled to administrative priority. Moreover, there is no legal basis to permit the Debtors to pre-determine the priority of any and all claims the Affected Dealers will undoubtedly incur as a result of the contemplated rejections. Nor should they be permitted "for the avoidance of doubt" to shovel as many categories of claims as possible into a single category which "must be asserted only as Rejection Damages Claims." (Motion to Reject at ¶ 63). Indeed, in their Motion to Reject, Debtors ask this Court to declare that the following claims may only be asserted as damage claims in this Court.

- The repurchase of unsold inventories of vehicles and parts;
- Payment assistance in connection with Affected Dealers' obligations to third parties;

- Payment of incentives, commissions or other compensation for having sold vehicles or parts;
- Alleged loss of future profits or other consequential damages;
- Payment of any amounts claimed to be due under any statutes governing the termination, nonrenewal, cancellation or discontinuance of the dealership agreements or franchise rights; and
- Alleged damages suffered as a result of the loss of rights and benefits under Dealer Laws.

(Motion to Reject at ¶ 63).

133. Section 502(g) of the Bankruptcy Code provides that damages resulting from the rejection of an executory contract are treated as general unsecured claims. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984), citing section 502(g) (“Damages on the contract that result from the rejection of an executory contract, as noted, must be administered through the bankruptcy and receive the priority provided general unsecured creditors.”). Generally, creditors are entitled to file their claims, and the debtor is entitled to object to such claims, as they see fit. As with everything else in these cases, however, the Debtors are trying to move at light-speed and side-step established processes in seeking to pre-determine the priority of any and all claims the Affected Dealers may be entitled to assert in relation to the rejection of the Rejected Dealer Agreements. The Debtors will have ample opportunity to object to any claims filed by the Affected Dealers. There is no justification for seeking a determination at this juncture that will foreclose any arguments Affected Dealers may assert relative to the priority of their claims.

134. Moreover, the term “rejection damages” refers to damages resulting from the rejection of an executory contract. *See, NLRB v. Bildisco & Bildisco*, 465 U.S. at 531. While the Debtors initially limit the “rejection damages” to unperformed obligations *under the proposed rejected dealer agreements*, they subsequently expand this category to include, among

others, rights to payment of *any* amounts claimed to be due under *any* statutes governing the termination, nonrenewal, cancellation or discontinuance of the dealership agreements or franchise rights. The Debtors cite to no case law in support of the proposition that rights to payment under such statutes constitute “damages” at all, let alone damages resulting from the rejection of the franchise agreements. There is simply no basis on which to justify pre-determining these claims as rejection damages claims.

135. The Debtors also seek Court recognition that they “are concluding their commercial relationships with the Affected Dealers” and through rejection they are “mak[ing] a clean and complete break from their business relationships with the Affected Dealers.” (Motion to Reject at ¶ 64). Notwithstanding such request, however, the Debtors then inexplicably take the position that certain agreements (*i.e.*, the “Site Control Agreements”) between Debtor Chrysler Realty Company LLC and the Affected Dealers will remain in effect. (Motion to Reject at ¶ 22 n.7). Of course, they do not attach any sample Site Control Agreements. Nor do they explain the content of the agreements or how the Debtors can conclude their business relationships with the Affected Dealers yet maintain rights under these agreements.

136. In addition, the Debtors’ request for a declaration that rejection “concludes the relationship” between the Affected Dealers and the Debtors (Motion to Reject at ¶ 64), likewise overreaches. The plain language of section 365(g) makes clear that the rejection of an executory contract constitutes only a pre-petition breach, not a termination or conclusion, of the contract (unless, of course, there is a basis for it to be an administrative claim as described above). 11 U.S.C. § 365(g).

137. The Second Circuit, time and again, has made it abundantly clear that the rejection of an executory contract does not terminate the contract. *See Medical Malpractice*

Insurance Association v. Hirsch (In re Lavigne), 114 F.3d 379, 386 (2d Cir. 1997) (“If the contract has not been previously assumed, rejection of the debtor’s executory contract constitutes a breach of the contract.”); *COR Route 5 Co., LLC v. The Penn Traffic Company (In re The Penn Traffic Company, et al.)*, 524 F.3d 373, 378 (2d Cir. 2008) (“Rejection is in effect a decision to breach the contract or lease.”). Rather, “rejection merely frees the estate from the obligation to perform; it does not make the contract disappear.” *In re Lavigne*, 114 F.3d at 386-87, quoting *In re The Drexel Burnham Lambert Group*, 138 B.R. 687, 703 (Bankr. S.D.N.Y. 1992).

138. Additionally, while the Bankruptcy Code treats rejection as a breach, it is state law that determines the rights of the parties to the contract and the effects of the breach. *In re Lavigne*, 114 F.3d at 387 (“However, the Bankruptcy Code does not determine parties’ rights regarding the contract and subsequent breach. To determine these rights, we must turn to state law.”); see also, *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. at 709 (“Consistent with bankruptcy law’s general deference to state-law rights in or to specific property, rejection of a contract does not terminate such rights that arise from rejected contracts. Rejection is not itself an avoiding power.”).

139. Here, the proposed rejection of the dealer agreements will serve to breach, not terminate, the agreements. The effect of the breach will be to simply free the Debtors from their obligations to perform *under the agreements*. The rejection will neither terminate the agreements nor eradicate the Debtors’ obligations under relevant state laws that protect the Affected Dealers. Nor can the Court enter an order prohibiting the Affected Dealers from discussing (or seeking relief from) the Government Entities without running afoul of the First Amendment.

140. Finally, Debtors also seek a prospective injunction against “any interference” with New Chrysler by “Government Entities” and any other parties, including the Affected Dealers. Notwithstanding that the relief sought by Debtors is hopelessly vague, it fails to comply with the requirements of Bankruptcy Rule 7001 that injunctive relief must be sought through an adversary proceeding. Such relief in this context would accordingly violate fundamental due process by not providing these unidentified Government Entities and other affected parties with notice and an opportunity to be heard.

141. Bankruptcy Rule 7001 provides that a request for an injunction *must* be commenced by filing an *adversary proceeding*. An injunction cannot be obtained through a motion to reject executory contracts in the main case. *See, e.g., Kish v. Verniero (In re Kish)*, 221 B.R. 118, 140 (Bankr. D.N.J. 1998) (“The court further notes that an action against a state official for declaratory or *injunctive* relief . . . to terminate an ongoing violation of bankruptcy law will presumably require an adversary proceeding.”) (emphasis in original); *In re Martin*, 268 B.R. 168, 172 (Bankr. E.D. Ark. 2001) (“In order to ensure that due process and property rights are preserved, Rule 7001 . . . requires that a request to obtain an injunction, or other equitable relief be filed as an adversary proceeding. . . . Since, the debtor may not obtain an injunction by motion, the motion must be denied.”); *In re Williston Oil Corp.*, 54 B.R. 10, 12 (Bankr. D.N.J. 1984) (Chapter 11 debtor in possession cannot obtain equitable relief moving state’s environmental enforcement proceeding to Bankruptcy Court because Bankruptcy Rule 7001(7) requires that debtor file an adversary proceeding and debtor instead chose to make motion in main case); *In re Southern Inst. for Treatment and Evaluation, Inc.*, 217 B.R. 962, 964 (Bankr. S.D. Fla. 1998) (in action for relief under § 525 and other provisions, the court found that the debtor’s failure to file an adversary proceeding precluded injunctive relief). Because Debtors

have simply tacked on their request under section 525 for an injunction against “any interference” with New Chrysler by Government Entities, Affected Dealers and other parties as part of their Motion to Reject in the main proceeding, and not by filing an adversary proceeding, the request should be denied.

142. In addition to the fact that Rule 7001 precludes the requested relief, the Debtors’ attempted end run around the due process rights of the unidentified Government Entities, Affected Dealers and other parties also precludes it. It is well-established that an injunction may not apply to persons who are not parties to the proceeding. *See, e.g., Chase Nat’l. Bank v. Norwalk*, 291 U.S. 431, 436-37 (1934) (finding injunction clearly erroneous where it extended to “all persons to whom notice of the injunction should come” because it purported to affect rights of those who had “not been adjudged according to law.”); *United States v. Kirschenbaum*, 156 F.3d 784, 796 (7th Cir. 1998) (finding injunction that purported to enjoin a non-party to be void). Accordingly, Debtors’ request for an injunction under Section 525 should be denied.

143. Perhaps an even more fundamental flaw in the Debtors’ request for a prospective injunction, is that they lack standing to assert claims of a hypothetical purchaser, and the Court lacks jurisdiction to protect such a purchaser from theoretical future violations of section 525(a). It is further questionable at best whether New Chrysler (or another hypothetical buyer) and the non-terminated dealers are “associated with” the Debtors for the purposes of section 525.

144. It is axiomatic that a debtor has no standing to pursue the rights of an unknown non-party. *See, e.g., Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (general rule that a party must assert his own legal rights and interests can only be overcome by showing a “close relationship” with third-party *and* that the third-party is unable to pursue its own rights); *Raghavendra v. Trustees of Columbia Univ.*, 06 Civ 6841, 2008 U.S. Dist. LEXIS 51995, at *33-

38 (S.D.N.Y. Jul. 7, 2008) (denying motion for preliminary injunction on behalf of unidentified third parties due to lack of standing and other deficiencies). Thus, Debtors have no standing here to seek a prospective injunction for New Chrysler (or another hypothetical purchaser) and the non-terminated dealers.

145. Even if New Chrysler (or another hypothetical purchaser) and the non-terminated dealers were to seek the injunction themselves, this Court would lack jurisdiction to entertain it because it is neither a core proceeding, nor a related proceeding. *Monaco v. Dept. of Educ. (In re County Schools, Inc.)*, 163 B.R. 424, 430-31 (Bankr. D. Conn. 1994). In *County Schools*, the purchasers of a bankrupt school's assets, who were officers and owners of the bankrupt, brought an adversary proceeding under section 525(a) against the Department of Education to enjoin it from disqualifying them from participating in federal programs due to their affiliation with the debtor. The court raised *sue sponte* the issue of its subject matter jurisdiction under 11 U.S.C. § 157. It concluded that the proceeding was not a "core proceeding" because it was not integral to the administration of bankruptcy estate. *Id.* at 430. Nor was the proceeding "related" because its outcome would not affect the amount of property available for the creditors. *Id.* See also *Betty Owens Schools, Inc. v. Dept. of Educ. (In re Betty Owens Schools, Inc.)*, 195 B.R. 23, 29-30 (Bankr. S.D.N.Y. 1996) (in adversary proceeding under section 525 the court was constrained by jurisdictional limitations over non-debtor's claim and considered its motion only to the "limited extent" that non-debtor's motion was effected by the debtor's section 525 motion).

146. The same is true here. Theoretical "interference" by Government Entities or the Affected Dealers against New Chrysler (or another hypothetical buyer) and the non-terminated dealers will not affect the administration of the Debtors' estates, nor will it affect the amount of property available to the creditors of the Estate. And unlike *Betty Owens*, New Chrysler (or

another hypothetical buyer) and the non-terminated dealers cannot even seek adjudication of such a claim to a “limited extent,” because Debtors do not themselves seek protection under section 525, as they will no longer be operating. Accordingly, the Court lacks jurisdiction to hear such theoretical claims involving hypothetical parties.

147. Notwithstanding the foregoing hurdles that Debtors cannot clear, New Chrysler (or another buyer) and the non-terminated dealers, as buyers of the Debtors’ assets and former customers of Debtors, are not afforded protection under section 525 as parties “associated with” a debtor. *See In re Draughon Training Inst., Inc.*, 119 B.R. 927, 933 (Bankr. W.D. La. 1990). In *Draughon*, the debtor argued that the Department of Education’s refusal to transfer the debtor’s licenses, accreditation, and certification to the purchaser of its assets constituted discrimination under section 525(a). The court found no violation of section 525 as to the debtor. *Id.* at 933. Moreover, the court held that “although § 525 also prohibits discriminatory treatment of one who has been associated with a debtor, ***this Court finds that this protection more properly extends to one who has been a co-owner, co-obligor, co-debtor, joint venturer, partner, agent, representative, or spouse of the debtor, rather than a transferee of the debtor.***” *Id.* (emphasis added). Accordingly, the Court should reject any attempt by Debtors to prospectively seek an injunction against Government Entities on behalf of New Chrysler (or another hypothetical purchaser) and the non-terminated dealers.

MEMORANDUM OF LAW

148. The Dealer Committee submits that the points and authorities set forth above satisfy the requirements of Local Bankruptcy Rule for the Southern District of New York 9013-1(b).

WHEREFORE, the Committee of Chrysler Affected Dealers respectfully requests that the Court deny the Sale Motion and grant the relief requested in the Continuance Request.

Respectfully submitted,

Dated: May 19, 2009

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Exhibit A

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
1	1st Avenue Chrysler, Inc.	66637	1919 Dodge Road NE	Cedar Rapids	IA	52407
2	A & D Auto Sales Inc. dba Alan Webb Dodge	43298	3712 NE 66th Ave.	Vancouver	WA	98661
3	Abraham Buick Inc. dba Abraham Chrysler Jeep	67561	1111 Broad Street	Elyria	OH	44035
4	Allen Samuels Austin Dodge, Inc.	45068	301 Owen Lane	Waco	TX	76710
5	Allen Samuels Chrysler Jeep, Inc.	68550	301 Owen Lane	Waco	TX	76710
6	Alley's of Kingsport, Inc.	42002	2761 E. Stone Drive	Kingsport	TN	37660
7	Amaral Motors, Inc.	63966	40 So. Main St., PO BOX 445	NEWTOWN	CT	06470
8	Ambassador Auto Service, Inc.	24160	525 West Third Street, PO Box 8306	Moscow	ID	83843-2317
9	Anchor Motor Company	68718	1120 Jeffreys Drive	Osceola	IA	50213
10	Archer Dodge	43928	12053 Southwest Freeway	Stafford	TX	77477
11	Arrow Ford, Inc. dba Arrow Chrysler Jeep	60080	3995 S. First Street	Abilene	TX	79605
12	Auffenberg Chrysler, Inc. dba Auffenberg Chrysler Jeep	68628	176 Auto Court	O'Fallon	IL	62269
13	Augusta Dodge, Inc.	44615	1886 Gordon Highway	Augusta	GA	30904
14	Automobile International Group dba Rutland Dodge	43683	Route 7	North Clarendon	VT	05759
15	Axelrod Chrysler, Inc.	68191	6767 Brookpark Road	Parma	OH	44129
16	Axelrod Chrysler-Dodge-Jeep, Inc.	42691	900 Broad Street	Wadsworth	OH	44181
17	B&L Dodge Chrysler, Inc.	41586	300 Center St.	Shamokin	PA	17872-1199
18	Balzekas Motor Sales, Inc.	8269	4030 S. Archer	Chicago	IL	60632
19	Barber Brothers Motor Company	67535	1339 North Main	Spanish Fork	UT	84660
20	Baum Boulevard Enterprises, Inc. dba Day's Baum Boulevard Dodge	45277	5625 Baum Blvd	Pittsburgh	PA	15206-3701
21	Baumgardner Motors DBA Hollern & Sons Dodge	54368	402 17th Street	Windber	PA	15963
22	Behrend Garage, Inc. dba Immel Motors	43862	1279 S US Highway 87, PO Box 191	Fredericksburg	TX	78624
23	Bell McCall Company	67498	300 West Main Street	Hamilton	MT	59840
24	Belle Mead Garage, Inc.	9827	2454 Route 206	Belle Mead	NJ	08502-4016
25	Belvidere Motors Inc.	64602	1201 N. State Street	Belvidere	IL	61008
26	Berlin Chrysler, Inc.	65052	94 West White House Pike	Berlin	NJ	08009
27	Bert Ogden Harlingen Motors Inc. dba Bert Ogden Motors Chrysler Dodge	68521	602 West Jackson	Harlingen	TX	78550
28	Bill Hellman Motor Co. dba Hellman Motor Co.	66760	750 E. Highway 92	Delta	CO	81416-3495
29	Bill Lyons Car Company DBA Lyons Toyota Dodge	42280	3851 Fourth Street SW	Mason City	IA	50401
30	Bill Spurlock Dodge Inc.	43024	351 Fourth Ave.	Huntington	WV	25701-1223
31	Birmingham Chrysler Plymouth DBA Birmingham Chrysler Jeep	63747	2100 W. Maple	Troy	MI	48084

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
32	Bob Dance Dodge Inc.	41291	3775 North Highway 17-92, PO Box 521167	Longwood	FL	32752
33	Bob Mayberry Chry-Dodge-Jeep Inc.	57159	3220 Hwy 74 West	Monroe	NC	28110
34	Bob Ridings Ford, Inc. DBA Bob Ridings Inc.	23740	931 Springfield Road	Taylorville	IL	62568-1220
35	Bob Ridings Linc-Merc Inc. dba Bob Ridings Jeep-Eagle	26543	3103 North 22nd St.	Decatur	IL	62526-2194
36	Bob Rohrman Motors, Inc. DBA Bob Rohrman Jeep Eagle	23349	701 Sagamore Parkway South	Lafayette	IN	47905
37	Bob Taylor Jeep, Inc.	23980	P.O. Box 11899	Naples	FL	34101
38	Bollinger's, Inc.	25078	208 Lincoln Avenue	Lakeview	MI	48850
39	Braeger Chrysler Jeep	68383	6133 S. 27th Street	Milwaukee	WI	53221
40	Brehm Group, Inc. DBA Russwood Chrysler	68069	8350 O Street	Lincoln	NE	68510
41	Brother's Motors Inc dba Diamond Dodge-Chrysler-Plymouth	68771	350 N. Switzer Canyon Dr.	Flagstaff	AZ	86001
42	Brown & Wood, Inc.	26490	329 SW Greenville Boulevard	Greenville	NC	27834
43	Bud Brown Chrysler	62529	9101 Metcalf Avenue	Overland Park	KS	66212-1404
44	Buddy Jones Ford Lincoln Mercury DBA Buddy Jones Chrysler Plymouth Dodge Jeep	68500	1601 Hwy 82 West	Greenwood	MS	38930
45	Burke Automotive Group, Inc. dba Naperville Jeep Dodge	23581	3300 Ogden Avenue	Lisle	IL	60532-1677
46	Burke Brothers, Inc.	68096	519 Stone Harbor Boulevard	Cape May Court House	NJ	08210-2417
47	Butts Pontiac-Cadillac Inc. dba Butts Jeep-Eagle	24190	4 Heitzinger Plaza	Seaside	CA	93955-3613
48	Cardenas Motors, Inc	47253	1500 North Expressway	Brownsville	TX	78521
49	Carlson's Motor Sales, Inc.	65085	13 Manchester St	Concord	NH	03301-5106
50	Carmack Car Capital of Danville, Illinois	66769	3724 N. Vermillion Street	Danville	IL	61832
51	Carson Automotive, Inc. dba Carson Jeep	26667	3390 S Carson Street	Carson City	NV	89701-5537
52	Cartwright Ford, Inc. DBA Cartwright Motors	42895	909 N Second Street	Booneville	MS	38829-1313
53	Century Dodge, Inc.	42189	13500 Telegraph Road	Taylor	MI	48180
54	Century Motor Corporation DBA Century Dodge Chrysler Jeep	43817	13500 Veterans Memorial Parkway	Wentzville	MO	63385
55	Childre Chrysler Plymouth Dodge	43058	126 Roberson Mill Road	Milledgeville	GA	31061
56	Cimino Brothers Chrysler Dodge Jeep	43961	PO Box 728, 246 Clark Ave.	Raton	NM	87740
57	City Motors, Inc.	24013	1601 Westover Terrace	Greensboro	NC	27408-7199
58	Clarkston Motors, Inc. DBA Clarkston Chrysler Jeep	67545	8105 Big Lake Road	Clarkston	MI	48346
59	Clay Dillahunty's Tri-County Motor Co.	42961	17825 Highland Drive	McKensie	TN	38201
60	Clayton Amerman, Inc.	53696	163 Main St. PO Box 309	Peapack	NJ	07977
61	Coleman Auto Group DBA Coleman Jeep	26424	1710 N. Olden Avenue	Ewing	NJ	08638

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
62	Coleman Chrysler Jeep, Inc.	68796	917 Route 130	East Windsor	NJ	08520
63	Colonial Dodge Inc. - JJF Management Services, Inc. .	58697	11411 Rockville Pike	Kensington	MD	20895
64	Columbia Ford-Mercury-Lincoln, Inc. DBA Columbia Chrysler Ply	68240	700 Seventh Avenue	Longview	WA	98632
65	Conti Causeway Ford DBA Causeway Jeep	26540	375 Rt. 72, PO Box 547	Manahawkin	NJ	08050
66	Continental Chrysler Jeep Inc.	26017	5800 South Lagrange Road	Countryside	IL	60525-4064
67	Cook Chevrolet Inc. DBA Cook Chevrolet Inc.	24233	1776 West Victory Way	Craig	CO	81626
68	Corwin Jeep Sales and Service dba Corwin Jeep	23505	133 MAIN ST	HICKORY	PA	15340-1144
69	Courtesy Motors	24178	2520 Cohasset Road	Chico	CA	95973
70	Courtesy Nissan Inc. DBA Courtesy Chrysler Jeep	26294	2301 39th Avenue	Moline	IL	61265
71	Coyle Dodge	43973	513 East Spring Street	New Albany	IN	47150
72	Crawford's Raytown Jeep Eagle Co.	26029	9401 East 350 Highway	Raytown	MO	64133
73	Crestmont Auto Group dba Crestmont Chrysler Jeep, LLC	60236	25855 Chagrin Blvd	Beachwood	OH	44122-4224
74	Curfin Investments dba Currie Motors of Forest Park	66952	8401 Roosevelt Road	Forest Park	IL	60130
75	Cutrubus Motors Inc. dba Rocky Mountain Chrysler Jeep	66598	770 West Riverdale Road	Ogden	UT	84405-3716
76	Dale Carter Ford, Inc. dba Dale Carter Motors	66864	510 S. Barron Street	Eaton	OH	45320
77	Darner Motor Sales Inc. DBA Darner Chrysler Jeep	35058	837 W. Main	Mesa	AZ	85201
78	Darrow Automotive dba Russ Darrow Chrysler Jeep	8223	W133 N8569 Executive Parkway	Menomonee Falls	WI	53051
79	Delmar Haynes Jeep-Eagle dba Delmar Haynes	23833	2939 Airport Highway	Alcoa	TN	37701
80	Dependable Dodge, Inc.	57555	1440 U.S. #1	Vero Beach	FL	32960
81	Des Moines Chrysler Plymouth, Inc. DBA Des Moines Chrysler	66517	4410 Merle Hay Road	Des Moines	IA	50310
82	Dominion Car Company	42246	1259 E. Main Street	Salem	VA	24153
83	D-Patrick, Inc.	23717	200 N. Green River Road	Evansville	IN	47715
84	Drake Chrysler Dodge Jeep	43097	912 N. Main Street	Monticello	KY	42633
85	Draper Chevrolet Co. dba Draper Dodge	44571	4200 Bay Road	Saginaw	MI	48603
86	Dulles Motor Cars, Inc. dba Dulles Jeep	26413	107 Catocin Circle Southeast	Leesburg	VA	20175-3712
87	Duvall Chrysler Dodge Jeep, Inc.	60387	PO Box 707	Clayton	GA	30525
88	E H Green Motors, Inc.	56259	700 Voss Ave., PO Box 744	ODEM	TX	78370
89	Eddie Cordes Jeep Dodge, LLC	23893	4800 NW Cache Road	Lawton	OK	73505
90	Edenton Motors, Inc.	43828	North Broad Street Extension	Edenton	NC	27932
91	Edwards Auto Sales Co., Inc.	24032	3440 Blue Ridge Blvd.	Walhalla	SC	29691
92	El Dorado Motors, Inc. DBA El Dorado Chrysler Jeep	68399	2110 N. Central Expressway	McKinney	TX	75070-3744

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
93	Elhart Dodge	43251	870 Chicago Drive	Holland	MI	49423
94	Elhart Pontiac GMC Truck Inc. dba Elhart Jeep Inc.	23405	822 Chicago Drive	Holland	MI	49423-3006
95	Elm Auto Sales, Inc.	23127	23 Kearny Avenue	Kearny	NJ	07032-2389
96	Ertley Chrysler-Jeep-Dodge LLC	60011	4225 Birney Ave.	Moosic	PA	18507
97	Evansville Chrysler Inc.	66101	4000 Division	Evansville	IN	47715
98	Extreme Jeep Inc.	26632	3017 West Route 120	McHenry	IL	60050
99	Faw's Garage	62044	Main Street	Arapahoe	NE	68922
100	Fiesta Lincoln Mercury Ltd DBA Fiesta Auto Center	43884	6320 Bandera Road	San Antonio	TX	78238
101	Fisher Motors, Inc.	23691	1111 20th Ave SW P.O. Box 1696	Minot	ND	58701
102	Fitgerald Auto Mall, Inc. - JJF Management Services, Inc.	43286	11411 Rockville Pike	Kensington	MD	20895
103	Fitzgerald Motors - JJF Management Services, Inc.	26309	11411 Rockville Pike	Kensington	MD	20895
104	Flanagan's, Inc.	24148	1700 Stephens	Missoula	MT	59801
105	Fort Morgan Auto Center Inc.	45143	1010 West Platte Avenue	Fort Morgan	CO	80701-2950
106	Fox Hills Chrysler Jeep	66924	111 W. Ann Arbor Road	Plymouth	MI	48170
107	Frostrom & Sons, Inc.	23292	1727 Market Street	Pocomoke City	MD	21851
108	G. Spitler Inc. dba Buzz Leonard Chrysler Jeep	60157	622 W. 15th Street	Panama City	FL	32401
109	Gene Beltz Shadeland Dodge, Inc.	57694	1630 N. Shadeland Avenue	Indianapolis	IN	46219
110	Gil's Jeep, Inc.	23034	50 Portsmouth Avenue	Stratham	NH	03885-2523
111	Golden Motors Inc. dba Venice Chrysler	68423	1550 S. Tamiami Trail	Venice	FL	34293
112	Golick Chrysler Jeep	23492	600 7th Street	Pitcairn	PA	15140
113	Graft Chrysler Dodge Jeep Inc.	41555	301 N. Broadway	Scottsdale	PA	15683
114	Grafton Dodge	44803	6326 George Washington Hwy.	Grafton	VA	23692
115	Grayson Pontiac dba Grayson Jeep-Eagle	23829	8729 Kingston Pike	Knoxville	TN	37923
116	Great Northern Dodge	42331	26100 Lorain Road	North Olmsted	OH	44070
117	Greenway Chrysler Jeep DBA Atlanta Chrysler Jeep Dodge	45343	9051 E. Colonial Drive	Orlando	FL	32817
118	Gregory Chrysler Jeep	68851	18850 W. Grand Avenue	Lake Villa	IL	60046
119	Gresham Chrysler Jeep, Inc.	67809	1990 E. Powell Blvd.	Gresham	OR	97080
120	Gribble's River Valley Motors dba River Valley Chrysler Jeep	62888	1903 Riverway Drive	Lancaster	OH	43130
121	Grubbs Chrysler Jeep dba Grubbs Nissan Mid-Cities Ltd.	67552	310 Airport Freeway	Bedford	TX	76022
122	Gunning Motors, Inc. Manassas Dodge	43866	9020 Liberia Avenue	Manassas	VA	20110
123	Gurley-Leep Dodge, Inc.	44188	5201 N. Grape Road	Mishawaka	IN	46545
124	H.E. Wagner Motor Sales Co., Inc.	54231	76 Valley Pike	Johnstown	PA	15905-4191
125	Hahn Motor Company	9066	1201 South 1st Street, PO Box 382	Yakima	WA	98901

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
126	Hamilton Chrysler	64980	1240 Route #33, PO Box 2670	Hamilton Square	NJ	08690
127	Hamilton Fairfield Dodge Jeep	44355	790 South Erie Highway	Hamilton	OH	44355
128	Hanford Chrysler Dodge Jeep dba Liberty Chrysler Dodge Jeep	68266	3400 McCall Ave, Suite #100	Selma	CA	93662
129	Harlan Auto Mart	62418	PO Box 511, 2204 Chatburn Avenue	Harlan	IA	51537
130	Harvey M Harper Co. dba Harper Jeep Country	24181	4800 N. US Highway 101	Eureka	CA	95503
131	Hill County C-D-J Products, LLC, dba, Mike Craig Chrysler-Dodge-Jeep-Hillsboro	45367	306 Southwest I 35	Hillsboro	TX	76645-2662
132	Holdiman Motor, Inc.	66086	4325 University Avenue	Cedar Falls	IA	50613
133	Hondru Chrysler, Inc.	67813	700 Lancaster Road, PO Box 216	Manheim	PA	17545
134	Hoover Chrysler Jeep	65009	2250 Savannah Highway	Charleston	SC	29414
135	Hoover Chrysler Jeep	42133	195 Mary Meade Drive	Summerville	SC	29483
136	I. M. Jarrett and Son Inc.	57987	335 S. York Road	Hatboro	PA	19040
137	Isakson Motor Sales Inc.	64540	3530 North Hobart Road	Hobart	IN	46342
138	Jack Dimond L-M Inc. DBA Jack O'Diamonds	42384	127 S. Spur 63	Longview	TX	75601
139	Janzen, Inc. dba Janzen Jeep	26531	2602 N. Van Buren St.	Enid	OK	73703-1712
140	JHS Business Associates Inc. dba Crossroads Superstore	44970	1701 South Mississippi	Atoka	OK	74525
141	Jim Clark Motors, Inc.	58812	2121 W. 29th Terr.	Lawrence	KS	66047
142	Jim Marsh American Corp dba Jim Marsh Chrysler Jeep	26717	8555 W. Centennial Parkway	Las Vegas	NV	89149
143	JJ Flynn, Inc. dba John Flynn Chrysler Jeep	60356	6225 Ridge Ave	Philadelphia	PA	19128-2630
144	Joe Ricci Dodge of Dearborn LLC	44350	14765 Michigan Avenue	Dearborn	MI	48126
145	John Cullen Dodge, LLC	45387	40 Walt Sanders Memorial Drive	Newnan	GA	30265-2169
146	John P. Hughes Motor Co.	51448	PO Box 898	Lynchburg	VA	24505
147	John Quaden Dodge Inc.	58391	W127 E. Wis. Ave. P.O. Box 145	Okauchee	WI	53069
148	Jones Ford Mercury LLLP dba Jones Chrysler Dodge Jeep	42779	781 W. Wickenburg Way	Wickenburg	AZ	85390
149	Kalmar Motor Sales, Inc.	23502	603 State Route 66	Leechburg	PA	15656
150	Kern Motor Company, Inc.	23318	2110 Valley Avenue	Winchester	VA	22601
151	Key Buick-Pontiac-Dodge, Inc. DBA Key Auto Mall	42569	3700 16 Street	Moline	IL	61265
152	Keystone Dodge, Inc.	41281	2350 Lehigh Street	Allentown	PA	18103
153	King Auto Group	26758	1800 Industrial Circle	Longmont	CO	80501
154	Kirby Oldsmobile DBA Jeep of Ventura	24101	6424 Auto Center Drive	Ventura	CA	93003
155	Kovatch Buick-Oldsmobile dba Kovatch Jeep	23235	423 West Catawissa St.	Nesquehoning	PA	18240
156	Krebs Chrysler Jeep, Inc.	62431	1015 Wm. Flynn Highway Rte 8	Glenshaw	PA	15116

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
157	Krebs Motors North, Inc. DBA Krebs Dodge	26616	100 Krebs Drive	Gibsonia	PA	15044
158	Lakeforest Chrysler Jeep, Inc. - JJF Management Services, Inc.	66264	11411 Rockville Pike	Kensington	MD	20895
159	Lakes Chrysler Jeep Ltd.	26448	36 Laconia Road Rt. 106	Belmont	NH	03220
160	Layton Dodge Inc dba Cutrubus Motors Chrysler Jeep	68270	1234 North Main Street	Layton	UT	84041
161	Leglue Automotive, Inc.	26548	4601 Coliseum Boulevard	Alexandria	LA	71303
162	Lenihan Jeep, Inc.	23185	Route 451 Route 73 SOUTH	Marlton	NJ	08053
163	Leskovar Jeep-Eagle	24143	3020 West Clearwater	Kennewick	WA	99336
164	Lieberth and Sons Dodge	42801	303 Hulton Road	Oakmont	PA	15139
165	Lima Auto Mall, Inc.	26594	2200 North Cable Road	Lima	OH	45805
166	Livonia Chrysler Jeep	66415	30777 Plymouth Road	Livonia	MI	48150
167	Los Feliz Ford, Inc. dba Star Chrysler Jeep	24118	1401 S. Brand Blvd.	Glendale	CA	91204-2809
168	Lou Bachrodt Chevrolet Company dba Lou Bachrodt Jeep	23616	7070 Cherryvale N. Blvd.	Rockford	IL	61112
169	Lunt Motor Co.	54409	39 So. Main Street, PO Box 899	Cedar City	UT	84720
170	Marketplace Chrysler, Inc.	66785	3755 West Henrietta Road	Rochester	NY	14623
171	Marstaller Motors, Inc.	23903	3000 Speight	Waco	TX	76711
172	Maurice Schwartz & Sons Inc. dba Schwartz Chrysler	8760	585 Shrewsbury Ave.	Shrewsbury	NJ	07702
173	Mauro Motors Inc.	5977	611 Amboy Avenue	Woodbridge	NJ	07095
174	Medlyn Motor, Inc.	23059	441 Elm Street	Milford	NH	03055
175	Midtown Motors, Inc. d/b/a John Howard	60256	1730 Mileground Road	Morgantown	WV	26505-3753
176	Mike Finnin Motors Inc.	23754	4355 Dodge Street	Debuque	IA	52003
177	Milam Jeep Mazda Inc. dba Milam Jeep	24170	608 River Road	Puyallup	WA	98371
178	Miller Motor Car Corporation	25064	4455 Vestal Parkway	Vestal	NY	13850
179	Mitch Crawford's Holiday Motors Co. dba Mitch Crawford's Holiday Chrysler	62078	9209 E. 350 Hwy.	Raytown	MO	64133
180	Monarch Dodge, Inc.	41322	2000 N. SR 7	Lauderdale Lakes	FL	33313
181	Monicatti Chrysler Jeep Sales, Inc.	61888	40755 Van Dyke Avenue	Sterling Heights	MI	48313
182	Morong Brunswick Jeep	23026	P.O. Box 697	Brunswick	ME	04011
183	Motor Inn Auto Group - Inc.	68496	PO Box 434, 114 S. 6th St.	Estherville	IA	51334
184	Motor Inn of Le Mars, Inc.	44748	PO Box 238, 205 5th Ave. NW	Le Mars	IA	51031
185	Motor Mart Auto Sales, Inc. DBA Motor Mart Dodge	42375	800 Washington Street	South Attleboro	MA	02703
186	MotorQuest of Jackson LLC	68868	3500 Page Avenue	Jackson	MI	49203
187	Mueller Chrysler Inc.	64826	2060 Omro Road	Oshkosh	WI	54904
188	Neosh Chrysler-Dodge-Jeep	44703	180 S. Highway 71	Neosho	MO	64850
189	New City Auto Sales, Inc.	41090	2813 Pennsylvania Ave.	Weirton	WV	26062-3792

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
190	Obaugh Ford Inc. dba Paul Obaugh Chrysler	66673	13 Lee Jackson Highway	Staunton	VA	24401
191	Ogden Chrysler, Inc. DBA Bill Kay's Chrysler of Downers Grove	65746	2100 Ogden Ave.	Downers Grove	IL	60515-2618
192	Orleans Dodge Chrysler Jeep LLC	45231	13000 I-10 Service Road	New Orleans	LA	70128
193	Orrin B. Hayes, Inc. dba Orrin B. Hayes Jeep-Eagle	26160	543 W. Michigan	Kalamazoo	MI	49007-3796
194	Owosso Motors, Inc. DBA Signature Jeep Eagle	26135	1960 E. Main Street	Owosso	MI	48867
195	Painter Sales and Leasing DBA Painter Chrysler-Dodge-Jeep	67360	1100 N. Main Street	Nephi	UT	84648
196	Palmer Dodge West, Inc.	42224	5051 Pike Plaza Road	Indianapolis	IN	46254
197	Palmer Dodge, Inc.	55483	4545 E. 96th Street	Indianapolis	IN	46240
198	Patrick Pontiac Inc. dba Patrick Jeep	23548	4700 W. Henrietta Road	Henrietta	NY	14467
199	Pen Motors dba Miller Hill Chrysler Jeep	26517	4710 Miller Trunk Highway	Duluth	MN	55811
200	Preston Auto Mall (Chrysler and Jeep)	68662	3843 Youngstown Road SE	Youngstown	OH	44484-2895
201	Preston Chrysler Jeep, Inc.	63181	13439 Preston Road	Dallas	TX	75240
202	Pride Chrysler Jeep	67773	11 Taunton Avenue	Seekonk	MA	02771
203	Ray's Ford-Mercury Inc. dba Ray's Chrysler Dodge Jeep	67191	385 ByPass Rd.	Brandonburg	KY	40108
204	Raytown Dodge Company	41450	10000 E. 350 Hwy	Raytown	MO	64138
205	Reed Brothers Dodge, Inc.	54193	15955 Frederick Road	Rockville	MD	20855
206	Reuther Dodge, LLC	45357	11654 Olive Boulevard	Creve Coeur	MO	63141
207	Reuther Investment Company dba Reuther Chrysler Jeep and Dodge	23738	11654 Olive Boulevard	Creve Coeur	MO	63141
208	RFJS Company, LLC DBA Frederick Chrysler Jeep Dodge	56617	7871 Market Street	Boardman	OH	44512
209	Rhoden Auto Centere, Inc.	66787	3400 South Expressway	Council Bluffs	IA	51501
210	Richard Chrysler Jeep Dodge, Inc.	68218	1845 E. Main Street	St. Charles	IL	60174
211	River Oaks Chrysler Jeep	67508	17225 Torrence Ave.	Lansing	IL	60438-1086
212	Roberts Motors, Inc.	66786	4350 Alby	Alton	IL	62002
213	Rock of Texas Automotive Inc. DBA Baytown Chrysler Jeep Dodge	60020	5225 I-10 East	Baytown	TX	77521
214	Roger Jobs Motors, Inc. dba Roger Jobs Jeep	24130	2200 Iowa St.	Bellingham	WA	98229-4722
215	Rogers Dodge, Inc. dba Rogers Dodge of Alvin	45044	2616 N. BYPASS 35	Alvin	TX	77511
216	Rohr-Alpha Motors, Inc. dba Arlington Chrysler Jeep Dodge	60230	925 W. Dundee Road	Buffalo Grove	IL	60089
217	Ron Willey Ford Inc.	23561	1155 South G Avenue	Nevada	IA	50201
218	S.J. Marnance Inc dba Schoenhard Ford-Dodge	43990	101 Second Street Southwest	Huron	SD	57350-2502
219	Salem Chrysler Jeep, Inc.	63051	5010 Salem Ave	Dayton	OH	45426-2095
220	Sarasota Chrysler	67768	6826 S. Tamiami Trail	Sarasota	FL	34231
221	Savannah Dodge, Inc.	44569	7011 Abercorn Extension, PO Box 16477	Savannah	GA	31406

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
222	Saylor Motor Co. Inc.	56006	301 N. Center Ave., PO Box 228	Somerset	PA	15501-1429
223	Scholtes Motorsd, Inc. dba Scholtes Auto World	39834	1215 Sherwood Ave.	Worthington	MN	56187
224	SCK, Inc. dba Brewer Jeep	26795	2020 Mabry Drive	Clovis	NM	88101
225	Scotia Motors Dodge	54885	110 Mohawk Avenue	Scotia	NY	12302
226	Sexton Chevrolet Cadillac Inc dba Sexton Chry-Plym-Dodge-Jeep-Eagle	24282	261 South roane St., PO Box 729	Harriman	TN	37748
227	Sheppard Motors Ltd.	24138	2300 West 7th	Eugene	OR	97402
228	Shoemaker's Jeep Inc.	23178	4131 Walbert Ave.	Allentown	PA	18104-1626
229	Skagit Auto Center, Inc.	26619	640 Auto Blvd	Burlington	WA	98233
230	Sonju Two Harbors LLC	67008	1100 7th Ave	Two Harbors	MN	55616
231	Sorg South Inc.	45397	2845 N. Detroit Street	Warsaw	IN	46582
232	South Charlotte Chrysler Jeep Dodge	45314	7601 South Blvd	Charlotte	NC	28273-6917
233	South Holland Dodge, Inc.	43020	113 W. 162nd Street	South Holland	IL	60473
234	South Shore Chrysler	64030	178 Washington St., PO Box 850-909	Braintree	MA	02184
235	Southeast/Signature Motors, Inc.	68230	2203 North West Broad Street	Murfreesboro	TN	37129
236	Sowell Auto, Inc. dba Dodge City Chry-Jeep	43120	79025 Hwy 111	La Quinta	CA	92253
237	St. Pete Jeep Chrysler	26318	2500 34th Street N	St. Petersburg	FL	33713
238	Star Chrysler, Inc. DBA Bill Kay's Naperville Chrysler	67592	1550 West Ogden Avenue	Naperville	IL	60540-3907
239	Stearns Chrysler-Jeep Inc	68206	327 Auto Park Dr., PO Box 1309	GRAHAM	NC	27253
240	Steven Chrysler-Jeep-Dodge, Inc.	66735	11028 W. Kellogg	Wichita	KS	67209
241	Sullivan Brothers Chrysler Dodge, Inc.	68558	5 Gallan Road	Kingston	MA	02364
242	Sunshine Dodge	41373	840 S. Harbor City Boulevard	Melbourne	FL	32901-1999
243	Superior Motors Inc.	24026	835 Five Chop Rd, PO Box 649	Orangeburg	SC	29115-0649
244	T&K Automotive Investments, Inc. dba Burlingame Chrysler Jeep Dodge	45438	1025 Rollins Road	Burlingame	CA	94010-2501
245	Tamaroff Dodge	43581	28585 Telegraph	Southfield	MI	48034
246	Tarbox Motors, Inc.	23061	1100 Tower Hill Road	North Kingstown	RI	02852
247	Taylor & Sons Inc. dba Taylor-Parker Motor Company	67959	P.O. Box 580, 300 Cedar Street	Sandpoint	ID	83864
248	Ted Britt of Fredericksburg, Inc. Britt Chrysler Jeep	67720	3427 Jefferson Davis Highway	Fredericksburg	VA	22401
249	Ted Miles Jeep Inc.	26031	7380 El Camino Real	Atascadero	CA	93422-4629
250	Tenafly Chrysler Jeep Inc.	23109	95 County Road	Tenafly	NJ	07670
251	Terry Chrysler-Jeep, Inc.	67314	873 Saratoga Road, Rt 50, PO Box 398	Burnt Hills	NY	12027
252	Terry Sligh Automotive Inc.	66576	1630 2nd Avenue E.	Oneonta	AL	35121
253	Thomaston Ford, Inc. - DBA Thomaston Chrysler Dodge Jeep	67885	1011 Hwy 19 North, P.O. Box 1153	Thomaston	GA	30286

Affected Dealers

	Dealership	Dealer Code	Street Address	City	State	Zip
254	Timberline Dodge, Inc. dba Timberline Chrysler Jeep Dodge	42184	2406 NE Sandy Boulevard	Portland	OR	97232
255	Tomkinson Dodge	44091	929 Avenue of Autos	Fort Wayne	IN	46804
256	Transportation Center of Louisville, Inc. DBA Montrose Chrysler	67660	3960 Medina Road	Akron	OH	44333
257	Tysinger Moter Company, Inc. dba Tysinger Dodge	55022	2712 Magruder Blvd.	Hampton	VA	23666
258	Uftring Ford dba Uftring Jeep	26040	500 Fairlane Dr.	East Peoria	IL	61611
259	Uftring Ford, Inc. dba Uftring Chrysler	60297	3905 N. University St.	Peoria	IL	61614-6938
260	Underriner Motors, Inc.	24222	607 N 30th St.	Billings	MT	59101-1194
261	University Park Auto, Inc. dba O'Brien Chrysler of Urbana	68730	1111 O'Brien Drive	Urbana	IL	61801
262	Van Burkleo Motors, Inc.	23861	3201 North 10th Street	McAllen	TX	78501
263	Van Lieshout & Simon Dodge	51825	225 Dodge Street	Kaukauna	WI	54130-2531
264	Vero Beach Lincoln-Mercury, Inc. DBA Vero Beach Jeep	23998	1066 U.S. 1	Vero Beach	FL	32960
265	Vic Osman Lincoln-Mercury Inc dba Osman Jeep	23975	625 East NASA Boulevard	Melbourne	FL	32901-1986
266	Village Chrysler-Jeep, Inc	23388	31200 Woodward Avenue	Royal Oak	MI	48073
267	Waco Dodge Sales, Inc.	41132	1220 N. Valley Mills Drive	Waco	TX	76710
268	Waikem Motors Inc. dba Waikem Chrysler Jeep	65884	3716 Lincoln Way East	Massillon	OH	44646-8609
269	Walker Motors, Inc.	23005	265 River Street	Montpelier	VT	05602
270	Wallace Chrysler Jeep, LLC	26763	5555 South U.S. #1	Ft. Pierce	FL	34982
271	Weinberg Dodge, Inc.	58678	13100 South 71 Hiway	Grandview	MO	64030
272	West End Garage, Inc.	6948	965 St. George Ave.	Rahway	NJ	07065
273	Westminster Dodge, Inc.	41718	710 Morrissey Boulevard	Dorchester	MA	02122
274	Westside Dodge, Inc.	44609	201 Hansel Boulevard	North Aurora	IL	60542
275	Wheaton Dodge City, Inc. - JJF Management Services, Inc.	59786	11411 Rockville Pike	Kensington	MD	20895
276	Wheeler Leasing Co. II Inc. dba Wheeler Jeep	24191	350 Colusa Avenue, P.O. Box 1150	Yuba City	CA	95992
277	Willey, Inc.	68156	123 Airport Road	Ames	IA	50010
278	William T. Pritchard, Inc.	57104	304 South Cayuga Street Box 548	Ithaca	NY	14851
279	Wilson Dodge, Inc.	43679	4200 Lakeland Drive	Flowood	MS	39232
280	Wissler Motors, Inc.	23196	1205 W. Main Street	Mount Joy	PA	17552
281	Woodbridge Nissan Corp. dba Cowles Nissan Chrysler	66910	14777 Jefferson Davis Highway	Woodbridge	VA	22191
282	Wyckoff Chrysler	67977	290 Franklin Ave.	Wyckoff	NJ	07481-2815
283	Young Volkeswagen Inc. dba Young Dodge	42507	191 Commerce Park Drive	Easton	PA	18045
284	Zimmer Motor Inc. dba Zimmer Chrysler-Jeep	66559	1086 Burlington Pike	Florence	KY	41042-1236

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
In re: : Chapter 11
: :
CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
Debtors. : (Jointly Administered)
-----X

DECLARATION OF HOMER CUTRUBUS

I, Homer Cutrubus, make this declaration under 28 U.S.C. § 1746 and state:

1. I am the owner of Cutrubus Motors Inc., d.b.a. Rocky Mountain Chrysler Jeep in Ogden, Utah (“Ogden CJ”) and Layton Dodge Incorporated, d.b.a. Cutrubus Motors Chrysler Jeep in Layton, Utah (“Layton CJ” and, together with Ogden CJ, “Cutrubus”). I am older than 21 years of age and suffer no legal disability. I am competent to make this declaration.
2. On May 14, 2009 I received a notice from Chrysler (a copy of which is attached hereto as Exhibit A) (the “Termination Letter”) that both Layton CJ and Ogden CJ were among the 789 dealerships whose franchise agreements Chrysler LLC now seeks to reject.
3. I have been in the automobile business since 1964 and a Chrysler dealer since 1969.
4. Until April 2009, Layton CJ operated out of 2 stand-alone facilities, an approximately 45,000 square foot Chrysler-Jeep facility and an approximately 24,000 square foot Dodge facility. For years, Chrysler has strongly encouraged its dealers to operate Chrysler, Jeep and Dodge franchises under a single roof. However, notwithstanding my desire to be a team player, consolidating these operations simply did not make good business or economic sense, so I necessarily declined to take that action.

5. In February of this year, Chrysler stepped up its pressure for me to combine my 2 Layton CJ facilities into a single, alpha store. Although such action still did not make sense for Layton CJ, Chrysler emphasized the need, given Chrysler's then economic struggles, for me to do so. By letter from Mr. Michael Siegel dated April 2, 2009 (a copy of which letter is attached hereto as Exhibit B) (the "Siegel Letter"), Chrysler informed me that it had approved the consolidation of the 2 Layton operations and relocation of the Dodge facility to the Chrysler-Jeep facility. The Siegel Letter was forwarded to me under a cover email from Mr. Siegel, also dated April 2, 2009 (the "Siegel Email", a copy of which is attached hereto as Exhibit C). The Siegel Email, which clearly was intended to motivate me to proceed with the approved consolidation, not only assured me of a continuing relationship with Chrysler but implied I was their "guy" going forward.

6. Based largely on the assurances I received from Chrysler, I reluctantly moved forward with the approved consolidation of Layton CJ. We eliminated and moved personnel, changed banking and bonding relationships and, since April 2, 2009, have incurred in excess of \$100,000 in expenses directly related to the consolidation. More damaging, I now have a vacant facility with significant loss potential.

7. In addition, solely in order to maintain rapport with Chrysler, Cutrbus has continued to finance its Dodge floor through Chrysler (rather than through Wells Fargo as is the case with Chrysler Jeep). Chrysler now has notified me that, due to reduced sales resulting from its bankruptcy, it must retain \$1.2 million of Cutrbus cash until such time (if any) as the floor get paid off.

8. Should Chrysler be permitted to reject my dealership agreements, the addition damage to Cutrbus and its employs will be substantial. In excess of 100 jobs are

currently at risk. Especially in light of the assurances made to me by Chrysler and described above, forcing Cutrbus and its employs to suffer these losses would be unconscionable.

Dated: May 19, 2009

/s/ Homer Cutrbus_____



66598
Homer K Cutrubus
Cutrubus Motors Inc
Rocky Mountain Chrysler Jeep
770 West Riverdale Road
Ogden, UT 84405-3716

May 13, 2009

Dear Homer K Cutrubus,

As you know, we are in the process of seeking approval of the sale of our primary operating assets to a new company. The unprecedented decline in the industry has had a significant impact upon sales and requires the new company to reduce production levels to better match ongoing demand. With the downsizing of operations following the sale and reduction of plants and production, similar reductions must be made in the size of the dealer body.

With regret, this letter is to inform you that on May 14th, 2009, we are filing a motion in bankruptcy court rejecting the Sales and Service Agreement(s) between Chrysler Motors LLC and the dealership listed above. Upon approval from the court, your agreement will be rejected on or about June 9, 2009.

We intend to maintain "business as usual" with you until the rejection takes place. We intend to honor warranty and incentive payments, during the period that you remain an active dealer subject to available financing. It is necessary to work together to make this transition as seamless as possible to your customers. After rejection, we want to work with you to assist in the redistribution of new vehicles and parts to ease the burden on you. Attached to this letter, please find further details regarding the transition period. Your business center will be in touch to offer assistance.

These are extraordinary times, and they call for extraordinary efforts. It is with a sense of profound sadness that we must take this step and reject some of our dealer Sales and Service Agreement(s), but it's a necessary step in the process of pursuing and completing the sale of our assets to the new company. We wish there was a better way, but there isn't.

We are grateful for the support you and your company have provided Chrysler over the years and we wish you the best under these circumstances.

Respectfully,

J. Tangeman
National Dealer Placement Manager

V-1-646

05/18/2009 MON 17:48 [TX/R]



FROM : CUTRUBUS MOTORS

FAX NO. : 8015447411

May. 18 2009 03:51PM P1



68270
Homer K Cutrubus
Layton Dodge Incorporated
Cutrubus Motors Chrysler Jeep
1234 North Main Street
Layton, UT 84041

May 13, 2009

Dear Homer K Cutrubus,

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We are grateful for the support you and your company have provided Chrysler over the years and we wish you the best under these circumstances.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Tangaman".

J. Tangaman
National Dealer Placement Manager

V-1-741



CHRYSLER

Chrysler, LLC
Denver Business Center

April 2, 2009

RE: Approval for the relocation and add-line of Layton Dodge Inc DBA Layton Hills DT to DBA Cutrubus Motors

To Whom It May Concern

Effective April 2, 2009 Chrysler, LLC has approved the relocation of the sales, service, and parts operations of Layton Dodge Inc, DBA Layton Hills Dodge, from address 650 North Main St, Layton, UT 84041 to Layton Dodge Inc, DBA Cutrubus Motors, address 1234 North Main St, Layton, UT 84041.

Please refer all inquiries to Michael Siegal of Chrysler LLC Denver Business Center at 303-793-8330.

Sincerely,

Michael Siegal



REDACTED

----- Original Message -----

From: ms189@chrysler.com

To: homer@cutrubus.com

Cc: gen3@chrysler.com

Sent: Thursday, April 02, 2009 5:22 PM

Subject: Approval Letter

Homer-

I believe Steve Yandura has provided you verbal confirmation of the approval for the relocation of the Dodge franchise to the Chrysler, Jeep franchises' location. Gordy Nevers and I fought hard on your behalf to receive the approval of this consolidation. We believe this action is best for you and Chrysler.

We have disclosed to you our proposed plan to combine all franchises in Layton and Ogden into one location. We believe this further consolidation will provide the throughput to make the owner/operator, of this surviving location, financially stable and profitable. To further ensure the success of this proposed dealership we need a strong owner/operator with: a history of excellent MSR, a history of excellent Customer Promoter Scores, and willingness to invest in an adequate and well appointed facility.

Are you our guy?

Please find attached a letter of approval for the consolidation, original to follow. If you need any further information please contact me.

Thanks,
Mike

<p>Michael S Siegal Chrysler Motors LLC Denver Business Center Suite: 4th Floor Tie-Line: 824-8330 Outside: 303 793 8330 E-mail: **New E-Mail** ms189@chrysler.com [Mailing: 6400 South Fiddlers Green Cir Suite 400 Greenwood Village, CO 80111 USA]</p>

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.0.238 / Virus Database: 270.11.38/2037 - Release Date: 04/02/09 06:09:00

5/18/2009



EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
: Debtors. : (Jointly Administered)
-----X

DECLARATION OF GERALD SPITLER

I, Gerald Spitler, make this declaration under 28 U.S.C. § 1746 and state:

1. I am the owner and president of G. Spitler, Inc., d.b.a. Buzz Leonard Chrysler-Jeep (“Buzz Leonard”). Buzz Leonard is an authorized Chrysler and Jeep dealer located in Panama City, Florida. I am older than 21 years of age and suffer no legal disability. I am competent to make this declaration.

2. Having bought my first dealership in 1981, I have been in the automobile business for nearly 30 years. Buzz Leonard has been an authorized Chrysler and Jeep dealer since 2004, when I acquired Chrysler, Jeep, Mazda and Mitsubishi franchises. I have since sold the Mazda franchise. Beginning in January 2009, Chrysler stepped up its pressure for Buzz Leonard to become an “alpha” store. In order to demonstrate to Chrysler I was a team player, at Chrysler’s request, I did the following: (1) unwound the Mitsubishi franchise (at a cost in excess of \$200,000), (2) purchased substantial amounts of unneeded inventory (which peaked at 120 days of inventory when I normally stock 45); and (3) attempted, unsuccessfully, to acquire a neighboring Dodge franchise. As a result, Buzz Leonard has been since February of this year a free-standing Chrysler-Jeep dealer with 32 service stalls standing on 10 acres.

3. Because I had just recently completed these substantial and costly efforts at Chrysler’s behest, I was shocked to receive notice on May 14, 2009 that Buzz Leonard was

among the 789 dealerships whose franchise agreements Chrysler LLC now seeks to reject. If the Court allows Chrysler to reject my dealer agreement, having unwound the Mitsubishi franchise at Chrysler's request, I will be left without a single new car franchise. Moreover, I will be forced to liquidate the dealership (including specialty tools and equipment purchased over the years at substantial additional costs) for pennies on the dollar, and my remaining inventory of new vehicles will have to be sold as used cars and without the benefit of Chrysler sales warranties and incentives.

I declare under penalty of perjury that statements are true and correct.

Dated: May 19, 2009

/s/ Gerald Spitler
GERALD SPITLER

EXHIBIT D

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
: Debtors. : (Jointly Administered)
-----X

DECLARATION OF GUY WILLEY

I, Guy Willey, make this declaration under 28 U.S.C. § 1746 and state:

1. I am the General Manager of the Willey Auto Group (“Willey Auto”). My family owns and operates two dealerships which Chrysler now seeks to terminate. Our larger Ames, Iowa location sells Chrysler, Jeep, Ford, Lincoln, Mercury and Suzuki vehicles, while our smaller Nevada, Iowa location sells Chrysler, Dodge, Jeep and Ford vehicles. I am older than 21 years of age and suffer no legal disability. I am competent to make this declaration.

2. Willey Auto has been a proud dealer of Chrysler, Dodge, and Jeep vehicles for nearly 20 years. My family purchased our Nevada dealership in the 1970’s, which was originally a Ford franchise. Through hard work and dedication, we were able to purchase a second dealership in 1990. By the early 1990s, both dealerships had become members of the Chrysler network of dealers. In 1995, Willy Auto invested in its future by constructing new state-of-the-art facilities in Ames, which has been our flagship location ever since. My parents sacrificed much to build these dealerships, and I have had the privilege of managing them for the last 13 years.

3. As independently operated franchises, both of our dealerships are entirely owned and capitalized by my family; we alone bear the costs and expenses incurred by dealership. We receive no assistance or subsidies from Chrysler. Willey Auto, alone, pays for

its land, showroom, inventory, personnel, training, employee benefits, tools, equipment, maintenance, signage, advertisements, promotional materials and taxes.

4. Despite our current challenging economic climate, Willey Auto has managed to remain a profitable enterprise. Both our Ames and Nevada dealerships have returned profits the first quarter of 2009. In fact, while Chrysler sales have been down approximately 45% from last year's levels nationwide, our dealerships' performances have thus far remained flat. Combined, our two dealerships are currently running 14% over Chrysler sales objectives for 2009.

5. When I heard rumors that Chrysler was actively seeking to shed itself of dealers, I thought perhaps our smaller, rural Nevada location could be in jeopardy. However, I was shocked to receive a letter on May 14, 2009 from Chrysler notifying us that our flagship Ames location was also included among the 789 dealerships whose franchise agreements Chrysler LLC now seeks to reject. (A true and correct copy of the letter is attached hereto as Exhibit A.) From statements Chrysler has made in the news, it appears likely that our dealerships were targeted because we also own Ford and Suzuki franchises.

6. If the Court approves Chrysler's attempt to reject our franchise agreements on June 9, the impact will be immediate and devastating. Sales of new Chrysler vehicles account for roughly 50% of Willey Auto's sales. And Chrysler accounts for an even larger portion (60%) of our service and parts business. The loss of Chrysler warranty service would be disastrous, but the additional loss of non-warranty work that would likely follow compounds the damage. Since Chrysler released its list of rejected dealers, Willy Auto has experienced a 20% drop in service calls and a number of customers have called to inquire whether we intend to open for business on June 10. Without that revenue, it is very likely that we will have to shutter our original Nevada

location. And while the prospects for our flagship Ames location are somewhat brighter, it remains to be seen whether it can be made economically sustainable in the long term.

7. Our Ames location employs 25 individuals and our Nevada location employs another 9. In all, the livelihood of 34 hardworking people (not including family members) depends on Willey Auto. The loss of the Chrysler, Dodge and Jeep franchises threatens their ability to support their families. If we are forced to shutter our doors, these employees will be forced to seek alternative employment within the already suppressed automotive industry.

8. Between the two locations, Willey Auto has 78 Chrysler, Dodge and Jeep vehicles and over \$150,000 worth of Chrysler, Dodge and Jeep parts in inventory. Most of this inventory was accepted as a result of intense pressure from Chrysler to purchase additional, unneeded stock. Earlier this year, our Chrysler representative called us multiple times per day, strenuously urging us to accept additional inventory in order to help Chrysler stave off bankruptcy. In fact, at one point, our inventory of approximately 150 vehicles far exceeded our floor plan limit imposed by our lenders. If Chrysler is permitted to reject our dealership agreements, our entire inventory of new vehicles will have to be sold as used cars without the benefit of Chrysler warranties and incentives. Moreover, we will be forced to sell our entire stock of Chrysler parts for pennies on the dollar to surviving Chrysler dealers. Forcing us to suffer this extraordinary loss of value only compounds the injustice, particularly as we only agreed to purchase the additional inventory as a favor to Chrysler in the first place.

I declare under penalty of perjury that statements are true and correct.

Dated: May 19, 2009

/s/ Guy Willey
Guy Willey



23561
Ronald L Willey
Ron Willey Ford Inc
1155 South G Avenue
Nevada, IA 50201

May 13, 2009

Dear Ronald L Willey,

As you know, we are in the process of seeking approval of the sale of our primary operating assets to a new company. The unprecedented decline in the industry has had a significant impact upon sales and requires the new company to reduce production levels to better match ongoing demand. With the downsizing of operations following the sale and reduction of plants and production, similar reductions must be made in the size of the dealer body.

With regret, this letter is to inform you that on May 14th, 2009, we are filing a motion in bankruptcy court rejecting the Sales and Service Agreement(s) between Chrysler Motors LLC and the dealership listed above. Upon approval from the court, your agreement will be rejected on or about June 9, 2009.

We intend to maintain "business as usual" with you until the rejection takes place. We intend to honor warranty and incentive payments, during the period that you remain an active dealer subject to available financing. It is necessary to work together to make this transition as seamless as possible to your customers. After rejection, we want to work with you to assist in the redistribution of new vehicles and parts to ease the burden on you. Attached to this letter, please find further details regarding the transition period. Your business center will be in touch to offer assistance.

These are extraordinary times, and they call for extraordinary efforts. It is with a sense of profound sadness that we must take this step and reject some of our dealer Sales and Service Agreement(s), but it's a necessary step in the process of pursuing and completing the sale of our assets to the new company. We wish there was a better way, but there isn't.

We are grateful for the support you and your company have provided Chrysler over the years and we wish you the best under these circumstances.

Respectfully,

A handwritten signature in black ink that reads "J. Tangeman". The signature is written in a cursive style with a large, looped initial "J".

J. Tangeman
National Dealer Placement Manager

V-1-68



Transition Period Information

We have provided below the processes and guidelines we will have in place to assist you. We know your customers have been important to you, and we recognize that it is in our mutual interest to work together to serve your customers during this transition period.

New Vehicle Inventory

As a result of its recent bankruptcy filing, Chrysler LLC is unable to repurchase your new vehicle inventory. However, we will assist with the redistribution of as many of your eligible vehicles as possible, among the dealers remaining in the Chrysler network. All vehicles will be inspected by a third party for equipment, damage, and mileage prior to redistribution. Any vehicles "reported sold" and in stock will not qualify.

Vehicle eligibility will be as follows:

- New and unused
- Undamaged
- No demos
- No more than 125 miles
- No vehicle previously reported sold

Parts and Accessory Inventory

Redistribution of Parts

As a result of its recent bankruptcy filing, Chrysler LLC is unable to repurchase your Mopar parts inventory. However, we will endeavor to match you with a dealer to consider purchase of your parts. This redistribution will occur among the dealers remaining in the Chrysler network. All agreements and transactions will be between the buying and selling dealers.

With your agreement, your parts inventory information will be provided to the remaining dealerships. The sales, payment, and delivery terms of the parts inventory are between dealerships.

Parts Ordering

Ordering will remain available for Daily Stock and Special Handling orders. Order delivery and return pick-up will continue per current delivery schedules.

At the time the rejection motion is filed, dealerships subject to rejection that are enrolled in ARO (Automatic Replenishment Ordering) will be removed from the program to alleviate an increase in dealer parts inventories.

Essential/Special Tools

As a result of its recent bankruptcy filing, Chrysler LLC is unable to repurchase your Essential/Special tools. However, we will assist with the redistribution of as many of your Essential/Special tools as possible. This redistribution will occur among the dealers remaining in the Chrysler network. All agreements and transactions will be between the buying and selling dealers.

Warranty Claims Processing

All Warranty, MOPAR, Recall, Transportation and Chrysler Service Contract Claims must be submitted to Chrysler Motors LLC for payment within seven days of the expected court approved rejection date. Chrysler will endeavor to credit your Dealer Statement for approved and processed claims.

- Warranty repairs performed after the rejection date are not eligible for payment.
- Submission of claims via DealerConnect is available until seven (7) days after the expected court approved rejection date.
- Upon rejection all current Warranty Material Return requirements remain in effect until seven (7) days after the court approved rejected date.
- Continue to maintain all supporting documents in the event of claim denials or chargebacks.

Sales Incentive Claims Processing

Incentive Claim Processing will be available for final claim submission and payment until seven (7) days after the court approved rejection date. Chrysler will endeavor to credit your Dealer Statement for approved and processed claims.

- Only those new vehicles retailed to bona fide customers prior to the expected court approved rejection date are eligible to be reported through the NVDR system.
- Vehicles with retail delivery dates prior to the expected court approved rejection date must be reported through the NVDR system in order for incentive claims to be processed.
- If a vehicle is reported through the NVDR system and incentives are claimed, that vehicle can not be redistributed to another dealer's inventory.
- Chrysler reserves the right to reject any claims for incentives that do not meet established program rules as indicated in the Gold Book.

Brand Signs

Upon rejection, all Chrysler will remove Chrysler owned signage at the earliest possible date.

DealerConnect Access

All DealerConnect user S-ID access, with the exception of the Dealer Principal, will be deactivated on the expected court approved rejection date. Thereafter, only the Dealer Principal's S-ID and password will be able to access and utilize available applications within DealerConnect.

May. 18. 2009 4:29PM

Discontinued Use of Chrysler LLC Trade Names, Trademarks, Logos, etc.

After expected court approved rejection date of your Sales and Service Agreement, you must immediately discontinue using any trade names applicable to Chrysler LLC and its subsidiaries in your corporate, firm or trade name and using any trade names, trademarks or insignias adopted or used by Chrysler LLC or its divisions, parent, affiliate or subsidiary companies, and take such steps as may be necessary to change such corporate, firm, or trade name. In addition, you must eliminate advertising containing any such trade names, trademarks or insignias, or anything else that would identify you as an authorized dealer for Chrysler Motors vehicles or products.

Questions

Should you have any questions regarding Chrysler LLC's bankruptcy process, you may visit the website chryslerrestructuring.com. Additionally, Dealer Principals may access "Ask Chrysler" on the home page of DealerConnect.

EXHIBIT E

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
: Debtors. : (Jointly Administered)
-----X

DECLARATION OF NICHOLAS PARKS

I, Nicholas Parks, make this declaration under 28 U.S.C. § 1746 and state:

1. I am President and General Manager of Rogers Dodge, Inc., d.b.a. Rogers Dodge of Alvin (“Rogers”). Rogers is an authorized Dodge dealer located in Alvin, Texas. I am older than 21 years of age and suffer no legal disability. I am competent to make this declaration.

2. Rogers is owned by my uncle, Peter Mankins, who bought his first dealership in the 1960’s from my grandfather, who had bought his dealership from my first great-grandfather, who had started in the automotive business as a motorcycle repairman in the early 1900’s. My family purchased the Rogers dealership in 2002 for \$2,000,000. Despite the business’s deep historical roots, Rogers is poised for the future. In 2006, we decided to invest in brand new state-of-the-art facilities designed by Dodge. My family paid cash for the building, which was appraised at \$3,700,000 in 2007. This building was specifically designed to sell Dodge vehicles and is ill-suited for any other purpose. In total, my family has invested approximately 6,000,000 in the business.

3. Rogers has always diligently fulfilled its contractual duties to Dodge by (a) aggressively selling and promoting vehicles and related products, (b) preparing vehicles for delivery to purchasers, (c) providing repair services for vehicles, and (d) providing warranty

service under warranty programs.

4. As an independently operated franchisee, Rogers is entirely owned and capitalized by my family; we alone bear the costs and expenses incurred by dealership, such as those relating to land, showroom, inventory, personnel, training, employee benefits, maintenance, signage, advertisements, and taxes. None of these costs or expenses is subsidized by Chrysler LLC.

5. Through these tough economic times, Rogers has managed to remain profitable. Much of our success can be traced to our innovative use of internet sales. Rogers' new car sales for the first four months of 2009 are actually up approximately 50% over their 2008 levels. Rogers also maintains a large and growing online catalog of more than 4,000 Dodge, Chrysler, and Jeep factory parts, which has seen a 35% increase in monthly parts over the last five months. In April 2009, Rogers was ranked among the top 100 Dodge dealers in new car sales by volume. Rogers qualified as a Five Star dealer for 2009.

6. This success has allowed Rogers to expand while other dealers are suffering. Our service department recently added an additional service advisor, service manager, and three master technicians. Our goal is to offer our customers 24-hour, seven-day per week service by the end of 2009. We have also recently hired a professional photographer/videographer to allow us to post studio-quality images of our inventory on our website.

7. Because of Rogers' recent successes, I was surprised to receive notice on May 14, 2009 that Rogers was among the 789 dealerships whose franchise agreements Chrysler LLC now seeks to reject. Rogers has already been damaged by the Chrysler's announcement. Two of Rogers' primary lenders -- lenders who collectively financed 60% of the dealer's auto

sales in the last 60 days -- recently suspended our financing agreements. But if the Court allows Chrysler to reject our dealer agreement, the impact will be devastating. New car sales make up nearly 50% of Rogers' monthly revenue. And without a Chrysler franchise, it will be impossible for Rogers to obtain the wholesale parts necessary to carry on its internet sales business. Without these revenue sources, it will be impossible for Rogers to continue paying operational expenses (including its \$6000 monthly property tax assessment).

8. Rogers employs 4 managers, 8 salespersons, 8 technicians, and 18 other professional and administrative staff. In all, 38 hardworking people depend on Rogers for their livelihood. The loss of the Dodge franchise will force Rogers to shutter its doors and terminate the employees, who will be forced to seek alternative employment within the already suppressed automotive industry.

9. Rogers currently has 190 new Dodge vehicles and \$120,000 worth of Dodge parts in inventory. Most of this inventory was accepted as a result of intense pressure from Chrysler to purchase additional, unneeded stock. For instance, earlier this year, Chrysler began offering additional new car rebate incentives only to those dealers that would purchase certain levels of monthly inventory. If Rogers were to refuse the additional inventory, it would have been left unable to compete with competitors who accepted the inventory.

10. Should Chrysler be permitted to reject my dealership agreement, not only will I be forced to liquidate the dealership (including specialty tools and equipment purchased over the years at a cost of several hundreds of thousands of dollars) for pennies on the dollar, but the remaining inventory of vehicles will have to be sold as used cars and without the benefit of Chrysler sales incentives. Forcing me to suffer this loss of value only compounds the injustice.

I declare under penalty of perjury that statements are true and correct.

Dated: May 19, 2009

/s/ Nicholas Parks
Nicholas Parks

EXHIBIT F

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
: Debtors. : (Jointly Administered)
-----X

DECLARATION OF WADE D. WALKER

I, Wade D. Walker, make this declaration under 28 U.S.C. § 1746 and state:

1. I am the owner of Walker Motors, Inc. (“Walker Motors”), which owns and manages a car dealership in Montpelier, VT. Walker Motors holds franchise agreements with Jeep, Ford, Mazda and Volkswagen. I am also a member of the Board of Directors for the National Automobile Dealers Association (“NADA”). I am older than 21 years of age and suffer no legal disability. I am competent to make this declaration.

2. At Walker Motors, we have been in the business of selling and servicing automobiles since 1953, and we have owned a Jeep franchise since 1963. As an authorized Jeep dealer, I have diligently endeavored to fulfill my contractual duties by (a) aggressively selling and promoting Jeep vehicles and related products, (b) preparing the vehicles for delivery to purchasers, (c) providing repair services for Jeep vehicles, and (d) providing warranty service under the Jeep warranty programs.

3. As an independently operated dealership, Walker Motors is entirely owned and capitalized by my family; we alone bear the costs and expenses incurred by the dealership. Pursuant to my Chrysler dealer agreement, my family is responsible for all costs relating to:

- (a) purchasing inventory (including financing charges incurred as a result Chrysler’s policy against cash purchases by dealers);

- (b) purchasing parts;
- (c) purchasing Chrysler approved signage, brochures, and trade fixtures, as well as costs incurred obtaining materials from the Chrysler website (such as service bulletins, pricing books, and technical service manuals);
- (d) real estate;
- (e) cleaning and maintenance of the showroom, lots and vehicles in inventory;
- (f) equipping the dealership with necessary specialty tools and equipment;
- (g) employee salaries and benefits;
- (f) employee training (including both travel expenses to and from Chrysler-mandated courses, as well as applicable enrollment fees for each course);
- (f) technology and software (which is required to access Chrysler network of incentive and customer programs); and
- (g) taxes, including without limitation real estate taxes, income taxes, social security taxes, and local inventory taxes.

Chrysler dealers are also obligated to advance the cost of warranty repairs pending approval and reimbursement from Chrysler (which usually takes 30 to 60 days). Moreover, should there be any clerical error in the reporting of the warranty work, Walker Motors bears the risk of Chrysler denying payment. Thus, individual Chrysler dealerships serve as distribution channels for Chrysler vehicles at virtually no cost to Chrysler. Stated differently, if a particular Chrysler dealership fails to sell any Chrysler vehicles, the only consequence to Chrysler is that it would not make any profit from that dealership.

4. Should the Court allow Chrysler to reject 789 dealership agreements, the impact will be devastating for rejected dealers, including Walker Motors. The loss of the

franchises would prevent the rejected dealers, including Walker Motors, from being able: (1) to sell the remaining Chrysler vehicles in inventory as new vehicles; (2) to offer warranties on remaining stock of Chrysler vehicles; or (3) to utilize manufacturer's incentives on remaining Chrysler vehicles. Many rejected dealers will immediately go out of business. In the process, those dealers will be forced to terminate their employees, displacing 50 or more employees in many instances.

5. Walker Motors employs four sales persons, two of which are dedicated to selling Jeep vehicles. Walker Motors also employs eight mechanics, three of which are dedicated to servicing Jeep vehicles. In all, 32 hardworking people depend on Walker Motors for their livelihood. If Walker Motors' dealership agreement with Chrysler is rejected, Walker Motors will be forced to terminate between three and five of its employees.

6. For at least the past ten years, Walker Motors has provided donations to charitable organizations throughout its community, including Camp Ta-Kum-Ta and youth sports leagues. Walker Motors also donates money to local schools within its community.

7. Walker Motors currently has seven Jeep vehicles and approximately \$60,000 worth of Jeep parts in inventory. Most of this inventory was accepted as a result of intense pressure from Chrysler to purchase additional, unneeded stock. Should Chrysler be permitted to reject my franchise, the remaining inventory of vehicles will have to be sold as used cars without the benefit of Chrysler warranties or incentives. Forcing me to suffer this loss of value only compounds the injustice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 18, 2009

/s/ Wade D. Walker
Wade D. Walker

EXHIBIT G

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
: Debtors. : (Jointly Administered)
-----X

DECLARATION OF GREG TAYLOR

I, Greg Taylor, make this declaration under 28 U.S.C. § 1746 and state:

1. I am the Owner and President of Taylor & Sons Inc. d.b.a. Taylor-Parker Motor Company (“Taylor-Parker”). Taylor-Parker is located in Sandpoint, ID and holds franchise agreements authorizing it sell Chrysler, Dodge and Jeep vehicles. I am older than 21 years of age and suffer no legal disability. I am competent to make this declaration.

2. I have been in the business of selling and servicing Chrysler and Dodge vehicles since 1988 and have been in the business of selling and servicing Jeep vehicles since 1998. I purchased Taylor-Parker in 1988 and have been operating under Chrysler and Dodge Sales and Service Agreements ever since and have been operating under a Jeep Sales and Service Agreement since 1998. Over the years, I have diligently strived to fulfill my duties to Chrysler, Dodge and Jeep by (a) aggressively selling and promoting Chrysler, Dodge and Jeep vehicles and related products, (b) preparing vehicles for delivery to purchasers, (c) providing repair services for Chrysler, Dodge and Jeep vehicles, and (d) providing warranty service under Chrysler, Dodge and Jeep warranty programs.

3. As an independently operated franchisee, I alone bear the costs and expenses incurred by Taylor-Parker, including those relating to land, showroom, inventory, personnel, training, employee benefits, maintenance, signage, advertisements, insurance and

taxes. None of these costs or expenses are subsidized by Chrysler LLC.

4. Through even the toughest economic climates, Taylor-Parker has always managed to return a profit. In 2008, Taylor-Parker sold a total of 56 new Chrysler, Dodge and Jeep vehicles which generated \$1,723,264 in sales. Taylor-Parker's 2007 sales results were even more impressive, totaling 100 new Chrysler, Dodge and Jeep vehicles and generating \$2,972,031 in sales.

5. Some of this success is attributable to Taylor-Parker's prime location. As the sole Chrysler, Dodge and Jeep dealer in a town with a population of approximately 10,000, with an area of responsibility including a population of approximately 42,000, Taylor-Parker has positioned itself for continued success for the future. In fact, no other Chrysler, Dodge or Jeep dealer exists within approximately 30 miles of Taylor-Parker.

6. Because of Taylor-Parker's relative success and profitability, I was shocked to receive notice on May 14, 2008, that Taylor-Parker was among the 789 dealerships whose franchise agreements Chrysler LLC now seeks to reject. Should the Court allow the rejection, the impact upon Taylor-Parker will be devastating. Due to servicing a large number of Chrysler, Dodge and Jeep vehicles sold by another dealership approximately 65 miles away, Taylor-Parker's revenues for performing Chrysler, Dodge and Jeep warranty services are disproportionately high when compared to Taylor-Parker's Chrysler, Dodge and Jeep new vehicle sales volumes. While Chrysler, Dodge and Jeep sales accounted for 34.58% of Taylor-Parker's 2008 new vehicle sales revenues, its revenues for performing warranty service for Chrysler, Dodge and Jeep vehicles accounted for 55.77% of its total warranty service revenue for the same period. Without that revenue, it is uncertain whether Taylor-Parker will be able to continue to pay its operational expenses or remain a viable business based solely on used car

sales, non-warranty repairs and the sale and service of Chevrolet products.

7. Taylor-Parker employs 5 salespersons, 7 mechanics, 5 service support staff, 3 parts staff, and 6 professional and administrative staff. In all, 26 hardworking people depend on Taylor-Parker for their livelihood. The loss of the Chrysler, Dodge and Jeep franchises threatens their continued employment. If Taylor-Parker is forced to close its doors, these employees will be forced to seek alternative employment within the already suppressed automotive industry.

8. Taylor-Parker currently has 21 Chrysler, Dodge and Jeep vehicles and \$36,170 worth of Chrysler, Dodge and Jeep parts in inventory. Most of this inventory was accepted as a result of intense pressure from Chrysler to purchase additional, unneeded stock. Should Chrysler be permitted to reject my dealership agreement, not only may I be forced to liquidate the dealership for pennies on the dollar, but the remaining inventory of vehicles will have to be sold as used cars without the benefit of Chrysler warranties and sales incentives. Forcing me to suffer this loss of value only compounds the injustice.

9. Taylor-Parker has a history of substantial financial contributions to the community, having contributed \$34,316 in 2005, \$24,085 in 2006, \$22,766 in 2007, and \$10,429 in 2008. Such amounts have included contributions to Washington State University, local area schools, the Boy Scouts of America, the local arts council, and various other charities. In addition, I spearheaded a drive to build a new field house and adjoining athletic fields at the local high school and middle school. In connection with this project, I personally donated over \$50,000 in cash for the building, supervised the fundraising, and assisted in the construction. The loss of the Chrysler, Dodge and Jeep franchises threatens these types of community contributions.

10. As a member of the Board of Directors of the National Automobile Dealers Association, I am aware of certain additional concerns which are shared by Taylor-Parker and other dealerships whose franchise agreements Chrysler LLC now seeks to reject. Among those concerns are the possible immediate negative tax consequences which may affect dealerships using the LIFO accounting method and which may require recapture of previous LIFO reserves as a result of discontinuation of delivery of new vehicles into inventory. Also among those concerns is the potential inability of dealerships to effectively service out-of-warranty Chrysler, Dodge and Jeep vehicles after rejection of the applicable franchise agreements due to the unavailability of brand-specific computerized diagnostic tools and computerized access to proprietary parts information.

Dated: May 19, 2009

/s/ Greg Taylor
Greg Taylor

EXHIBIT H

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
: Debtors. : (Jointly Administered)
-----X

DECLARATION OF GARY L. CURRY

I, Gary L. Curry, make this declaration under 28 U.S.C. § 1746 and state:

1. I am the co-owner and dealer-operator of Rock of Texas Automotive Inc., d/b/a Baytown Chrysler Jeep Dodge (“Baytown”). Baytown is an automobile dealership in Baytown, Texas, that has franchise agreements with Chrysler, Jeep, and Dodge. I am older than 21 years of age and suffer no legal disability. I am competent to make this declaration.

2. I have been in the automobile business since 1975. In 2002, my partner and I purchased a Chrysler-Jeep franchise for approximately \$600,000 and a Dodge franchise for \$1,500,000 and consolidated the three brands into a single dealership, Baytown. Since that time, we have diligently fulfilled our contractual duties by (a) aggressively selling and promoting Chrysler LLC vehicles and related products, (b) preparing vehicles for delivery to purchasers, (c) providing repair services for vehicles, and (d) providing warranty service under warranty programs. My partner and I have worked 10 and 12 hours a day, six days a week, to make Baytown a profitable dealership.

3. As an independent franchise, Baytown alone bears the costs and expenses incurred by the dealership, including those relating to our facility, inventory, personnel, training, employee benefits, maintenance, signage, advertising, taxes, and insurance. None of these costs

or expenses are subsidized by Chrysler LLC. It costs Chrysler LLC nothing to keep Baytown open and operating.

4. Through the toughest economic climates, Baytown has always managed remain profitable. Even during the exceptionally challenging year of 2008, Baytown made a profit of \$300,000. Baytown is well capitalized, having retired about two-thirds of the more than \$3 million in debt that was required to purchase the franchises and to keep cash on hand in the amount demanded by Chrysler LLC. Baytown has always controlled its expenses so as to remain profitable and a good partner to Chrysler LLC.

5. Baytown is located on Interstate 10 on the east side of Houston, about eight or nine miles outside the beltway. There is no other Chrysler, Jeep, or Dodge dealership within 22 miles of Baytown. Chrysler LLC had discussions with me about building a new facility closer to downtown Houston, but I did not believe the capital expenditure would be justified. That belief has been validated by losses suffered by new dealerships that have been built nearby.

6. I was surprised to receive notice on May 14, 2008, that Baytown is among the 789 dealerships whose franchise agreements Chrysler LLC now wants to reject. If the Court allows Chrysler LLC to reject its agreement with Baytown, the impact will be devastating. Sales and warranty service of Chrysler, Jeep, and Dodge vehicles generate approximately 60 percent of Baytown's gross receipts. Baytown will not be able to continue paying the expenses necessary to remain a viable business based solely on used car sales and customer-paid service. The obligations we have on our facility lease (\$25,000 per month for the next four and a half years) and contracts for computers, advertising, and other services are very substantial. Without a franchise, our investment of approximately \$3.3 million will be worth almost nothing.

Liquidation expenses and loss of the franchise will total in the millions and force us into bankruptcy.

7. Baytown employs approximately 34 people, some of whom have been with Baytown since it opened. The loss of the Chrysler, Jeep, and Dodge franchises poses a serious threat to these employees' livelihood. If Baytown is forced to close its doors, these employees will have to seek alternative employment within the suppressed automotive industry. I do not know where they will be able to find jobs.

8. Baytown currently has 150 to 160 new Chrysler, Jeep, and Dodge vehicles and \$220,000 worth of Chrysler, Jeep, and Dodge parts in inventory. Much of this inventory was accepted as a result of pressure from Chrysler LLC in recent months to purchase additional, unneeded stock. In fact, Baytown has about \$1.5 million in excess inventory that it accepted in an effort to assist Chrysler LLC. If Chrysler LLC is permitted to reject Baytown's dealership agreement, not only will we be forced to liquidate the dealership (including specialty tools and equipment purchased over the years at a cost of several hundreds of thousands of dollars) for pennies on the dollar, but the remaining inventory of vehicles will have to be sold as used cars without the benefit of manufacturer's warranties or sales incentives. Forcing Baytown to suffer this loss of value (not to mention losses resulting from facility and equipment leases and other contracts that must be broken or fulfilled) only compounds the injustice.

9. Most of the tools and equipment that will have to be liquidated would be of use to another dealership, and could have been sold along with the franchise. With the termination of this franchise, however, and with no other Chrysler dealership within 22 miles, the tools and equipment will have to be liquidated at whatever price Baytown can get. For Baytown to be put in this position, with no advance notice and a termination date only a few

weeks away, is not right. We did our part to remain profitable, sell and support Chrysler LLC vehicles, and even take extra inventory to help the manufacturer survive. Now, if Chrysler LLC has its way, we will have to close our doors and send our 34 employees into a job market with virtually no prospects. I know from the past seven years experience that Baytown is a viable franchise. Baytown and its employees should not have to suffer for Chrysler LLC's failure.

Dated: May 19, 2009

/s/ Gary L. Curry
Gary L. Curry

EXHIBIT I

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: CHRYSLER LLC., *et al.*, : Case No.: 09-50002 (AJG)
: :
: Debtors. : (Jointly Administered)
-----X

DECLARATION OF ROBERT ARCHER

I, Robert Archer, make this declaration under 28 U.S.C. § 1746 and state:

1. I am the sole owner of Archer Chrysler Jeep, which is an authorized dealer for Chrysler and Jeep vehicles located in Houston, Texas. I am also one of the owners of Archer Chrysler Jeep West, which is an authorized dealer for Chrysler and Jeep vehicles located in Houston, Texas. Finally, I am one of the owners of Archer Dodge, which is an authorized dealer for Dodge vehicles located in Houston, Texas (collectively, all three dealerships referred to as “The Archer Dealerships”). My three sons -- Robert, Jeff and Todd -- are the only other owners of Archer Chrysler West and Archer Dodge. I am older than 21 years of age and suffer no legal disability. I am competent to make this declaration.

2. Archer Chrysler Jeep has been in business since 1978, and it has sold Chrysler vehicles since that time. Archer Chrysler Jeep began selling Jeep vehicles in 1979. Archer Chrysler Jeep West has been in business since 2003, and has sold both Chrysler and Jeep vehicles since its inception. Archer Dodge has been in business since 1978, and it has sold Dodge vehicles since its inception. Over the years, The Archer Dealerships have diligently fulfilled their contractual duties to Chrysler, Jeep and Dodge by (a) aggressively selling and promoting their respective vehicles and related products, (b) preparing vehicles for delivery to purchasers, (c) providing repair services for the respective brands of vehicles, and (d) providing

warranty service under Chrysler, Jeep and Dodge warranty programs.

3. As an independently operated franchisee, my family and I alone bear the costs and expenses incurred by The Archer Dealerships, including those relating to land, showroom, inventory, personnel, training, employee benefits, maintenance, signage, advertisements, insurance and taxes. None of these costs or expenses are subsidized by Chrysler LLC.

4. Because of The Archer Dealerships' comparative success, I was shocked to receive notice on May 14, 2008, that all three of them were among the 789 dealerships whose franchise agreements Chrysler LLC now seeks to reject. Should the Court allow the rejection, the impact upon The Archer Dealerships will be devastating. Indeed, each of The Archer Dealerships will likely be forced to close.

5. Archer Chrysler Jeep employs approximately 140 people. Archer Chrysler Jeep West employs about 40 people. Archer Dodge employs about 70 people. If The Archer Dealerships are forced to close their doors, each of these approximately 250 employees will be forced to seek alternative employment within the already suppressed automotive industry.

6. Archer Chrysler Jeep currently has approximately 60 Chrysler brand vehicles and 140 Jeep brand vehicles in stock. Archer Chrysler Jeep also currently has approximately \$1.1 million worth of parts in stock.

7. Archer Chrysler Jeep West currently has approximately 60 Chrysler brand vehicles and 140 Jeep brand vehicles in stock. Archer Chrysler West also currently has approximately \$300,000 worth of parts in stock.

8. Finally, Archer Dodge currently has approximately 300 Dodge brand vehicles in stock. Archer Dodge also currently has approximately \$300,000 worth of parts in

stock.

9. Most of the inventory at The Archer Dealerships was accepted as a result of intense pressure from Chrysler to purchase additional, unneeded stock. Should Chrysler be permitted to reject the dealership agreements currently in place, not only will I be forced to liquidate The Archer Dealerships for pennies on the dollar, but the remaining inventory of vehicles will have to be sold as used cars without the benefit of Chrysler warranties and sales incentives. Forcing me to suffer this loss of value only compounds the injustice.

10. Attached hereto as Exhibit A is a true and accurate copy of a letter I received from Chrysler on May 14, 2009 that is related to Archer Chrysler Jeep.

I declare under penalty of perjury that the foregoing is true and correct.

executed on May 18, 2009

/s/ Robert Archer

Robert Archer



66098
Robert P Archer
Archer Chrysler-Plymouth Inc
Archer Chrysler-Plymouth-Jeep-
11614 Southwest Freeway
Houston, TX 77031-3696

May 13, 2009

Dear Robert P Archer,

As you know, we are in the process of seeking approval of the sale of our primary operating assets to a new company. The unprecedented decline in the industry has had a significant impact upon sales and requires the new company to reduce production levels to better match ongoing demand. With the downsizing of operations following the sale and reduction of plants and production, similar reductions must be made in the size of the dealer body.

With regret, this letter is to inform you that on May 14th, 2009, we are filing a motion in bankruptcy court rejecting the Sales and Service Agreement(s) between Chrysler Motors LLC and the dealership listed above. Upon approval from the court, your agreement will be rejected on or about June 9, 2009.

We intend to maintain "business as usual" with you until the rejection takes place. We intend to honor warranty and incentive payments, during the period that you remain an active dealer subject to available financing. It is necessary to work together to make this transition as seamless as possible to your customers. After rejection, we want to work with you to assist in the redistribution of new vehicles and parts to ease the burden on you. Attached to this letter, please find further details regarding the transition period. Your business center will be in touch to offer assistance.

These are extraordinary times, and they call for extraordinary efforts. It is with a sense of profound sadness that we must take this step and reject some of our dealer Sales and Service Agreement(s), but it's a necessary step in the process of pursuing and completing the sale of our assets to the new company. We wish there was a better way, but there isn't.

We are grateful for the support you and your company have provided Chrysler over the years and we wish you the best under these circumstances.

Respectfully,

J. Tangeman
National Dealer Placement Manager



V-1-636

Transition Period Information

We have provided below the processes and guidelines we will have in place to assist you. We know your customers have been important to you, and we recognize that it is in our mutual interest to work together to serve your customers during this transition period.

New Vehicle Inventory

As a result of its recent bankruptcy filing, Chrysler LLC is unable to repurchase your new vehicle inventory. However, we will assist with the redistribution of as many of your eligible vehicles as possible, among the dealers remaining in the Chrysler network. All vehicles will be inspected by a third party for equipment, damage, and mileage prior to redistribution. Any vehicles "reported sold" and in stock will not qualify.

Vehicle eligibility will be as follows:

- New and unused
- Undamaged
- No demos
- No more than 125 miles
- No vehicle previously reported sold

Parts and Accessory Inventory

Redistribution of Parts

As a result of its recent bankruptcy filing, Chrysler LLC is unable to repurchase your Mopar parts inventory. However, we will endeavor to match you with a dealer to consider purchase of your parts. This redistribution will occur among the dealers remaining in the Chrysler network. All agreements and transactions will be between the buying and selling dealers.

With your agreement, your parts inventory information will be provided to the remaining dealerships. The sales, payment, and delivery terms of the parts inventory are between dealerships.

Parts Ordering

Ordering will remain available for Daily Stock and Special Handling orders. Order delivery and return pick-up will continue per current delivery schedules.

At the time the rejection motion is filed, dealerships subject to rejection that are enrolled in ARO (Automatic Replenishment Ordering) will be removed from the program to alleviate an increase in dealer parts inventories.

Essential/Special Tools

As a result of its recent bankruptcy filing, Chrysler LLC is unable to repurchase your Essential/Special tools. However, we will assist with the redistribution of as many of your Essential/Special tools as possible. This redistribution will occur among the dealers remaining in the Chrysler network. All agreements and transactions will be between the buying and selling dealers.

Warranty Claims Processing

All Warranty, MOPAR, Recall, Transportation and Chrysler Service Contract Claims must be submitted to Chrysler Motors LLC for payment within seven days of the expected court approved rejection date. Chrysler will endeavor to credit your Dealer Statement for approved and processed claims.

- Warranty repairs performed after the rejection date are not eligible for payment.
- Submission of claims via DealerConnect is available until seven (7) days after the expected court approved rejection date.
- Upon rejection all current Warranty Material Return requirements remain in effect until seven (7) days after the court approved rejected date.
- Continue to maintain all supporting documents in the event of claim denials or chargebacks.

Sales Incentive Claims Processing

Incentive Claim Processing will be available for final claim submission and payment until seven (7) days after the court approved rejection date. Chrysler will endeavor to credit your Dealer Statement for approved and processed claims.

- Only those new vehicles retailed to bona fide customers prior to the expected court approved rejection date are eligible to be reported through the NVDR system.
- Vehicles with retail delivery dates prior to the expected court approved rejection date must be reported through the NVDR system in order for incentive claims to be processed.
- If a vehicle is reported through the NVDR system and incentives are claimed, that vehicle can not be redistributed to another dealer's inventory.
- Chrysler reserves the right to reject any claims for incentives that do not meet established program rules as indicated in the Gold Book.

Brand Signs

Upon rejection, all Chrysler will remove Chrysler owned signage at the earliest possible date.

DealerConnect Access

All DealerConnect user S-ID access, with the exception of the Dealer Principal, will be deactivated on the expected court approved rejection date. Thereafter, only the Dealer Principal's S-ID and password will be able to access and utilize available applications within DealerConnect.

Discontinued Use of Chrysler LLC Trade Names, Trademarks, Logos, etc.

After expected court approved rejection date of your Sales and Service Agreement, you must immediately discontinue using any trade names applicable to Chrysler LLC and its subsidiaries in your corporate, firm or trade name and using any trade names, trademarks or insignias adopted or used by Chrysler LLC or its divisions, parent, affiliate or subsidiary companies, and take such steps as may be necessary to change such corporate, firm, or trade name. In addition, you must eliminate advertising containing any such trade names, trademarks or insignias, or anything else that would identify you as an authorized dealer for Chrysler Motors vehicles or products.

Questions

Should you have any questions regarding Chrysler LLC's bankruptcy process, you may visit the website chryslerrestructuring.com. Additionally, Dealer Principals may access "Ask Chrysler" on the home page of DealerConnect.