

JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
Corinne Ball
Veerle Roovers

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman

JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309
Jeffrey B. Ellman

Proposed Attorneys for Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
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)
: :
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION, PURSUANT TO
SECTIONS 105(a), 363(b) AND 503(b)(9) OF THE BANKRUPTCY CODE,
FOR INTERIM AND FINAL ORDERS AUTHORIZING THEM TO PAY
THE PREPETITION CLAIMS OF CERTAIN ESSENTIAL SUPPLIERS AND
ADMINISTRATIVE CLAIMHOLDERS, CONTINUING THE DEBTORS'
TROUBLED SUPPLIER PROGRAM AND GRANTING CERTAIN RELATED RELIEF**

TO THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE:

Chrysler LLC ("Chrysler") and 24 of its domestic direct and indirect subsidiaries, as debtors and debtors in possession (collectively with Chrysler, the "Debtors"), respectfully represent as follows:

Preliminary Statement

1. Amidst perhaps the worst economic conditions to ever beset the automotive industry, and after months of hard work and dedication by the Debtors' management, employees and advisors (working with all key stakeholders and with the support of the U.S. government), the Debtors have commenced these cases to implement a prompt sale (the "Sale Transaction") to preserve the going concern value of their businesses, return their businesses to viability under new ownership, save hundreds of thousands of jobs and begin renewing the strength of the American automotive industry.

2. Just as the Debtors could not have forged this historic agreement without the support of their key partners, neither can they implement the Sale Transaction without the continuing support of their broad vendor constituency. This relationship is interdependent: the Debtors' suppliers, many of whom are struggling to withstand the same economic pressures that have precipitated the filing of these cases, depend on the Debtors' business for their survival. Because an efficient and intact supplier base is a core element of the going concern value to be transferred to the purchaser of the Debtors' assets, the Debtors have filed this Motion to ensure that the Debtors' supply chain will (a) be ready to function smoothly upon consummation of the Sale Transaction and (b) maintain the financial stability to transition key business relationships to the purchaser. Obtaining the relief sought herein — i.e., the authority to pay certain prepetition claims of entities indispensable to effecting a seamless Sale Transaction —

allows the Debtors to forestall the potential financial collapse of the supply base upon which the success of the Sale Transaction ultimately depends. Accordingly, to fulfill the goals of these chapter 11 cases, it is imperative that the relief requested herein be granted.

Background

3. On the date hereof (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases be consolidated for procedural purposes only and administered jointly.

4. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtors and their nondebtor direct and indirect subsidiaries (collectively, the "Chrysler Companies") comprise one of the world's largest manufacturers and distributors of automobiles and other vehicles, together with related parts and accessories. On the Petition Date, the Chrysler Companies employed approximately 55,000 hourly and salaried employees worldwide, 70% of whom were based in the United States. In addition, as of the Petition Date, the Debtors made payments for health care and related benefits to more than 105,000 retirees.

6. Chrysler's ultimate parent company, Chrysler Holding LLC ("Chrysler Parent"), also owns a financing company, nondebtor Chrysler Financial Services Americas LLC ("Chrysler Financial"), that operates under a governance structure separate from Chrysler, with its own board and management. Historically, Chrysler Financial has provided financing to both Chrysler's dealers and consumers.

7. For the twelve months ended December 31, 2008, the Chrysler Companies recorded revenue of more than \$48.4 billion and had assets of approximately \$39.3 billion and liabilities totaling \$55.2 billion.

8. A more detailed explanation of Chrysler's businesses and operations, and the events leading to the commencement of these cases, can be found in the Affidavit of Ronald E. Kolka, which was filed contemporaneously herewith and is incorporated herein by reference.

Overview of These Cases

9. The significance of this chapter 11 filing to Chrysler and to the United States economy is difficult to overstate. In connection with the filing, Chrysler is seeking approval from this Court to consummate the only sale transaction that preserves some portion of its business as a going concern and averts a liquidation of historic proportions. If the proposed transaction, designed to effect an alliance with Italian automobile manufacturer Fiat S.p.A. ("Fiat"), is rejected and Chrysler liquidates, it will mean the end of an iconic, 83-year-old American car company whose name has been synonymous with innovative engineering, from the Slant-Six and HEMI engines, to power windows, power brakes and power steering, to the minivan. A liquidation would also have impacts on the nation's economy and Chrysler's stakeholders that are grim:

- 38,500 hourly and salaried Chrysler workers in the U.S. will lose their jobs;
- Chrysler's workers and retirees and their surviving spouses will lose over \$9.8 billion of health care and other benefits and \$2 billion in annual pension payments;
- All 23 of Chrysler's manufacturing plants and facilities and 15 parts depots in the United States will shut down (as well as 18 additional plants and parts depots worldwide);

- Approximately 3,200 Chrysler dealers will be put out of business and the over 140,000 employees of those dealerships will lose their jobs;
- Over \$5.7 billion in outstanding auto parts and service supplier invoices will not be paid to Chrysler's suppliers and new business will be cancelled, forcing hundreds of suppliers out of business and the loss of hundreds of thousands of additional jobs;
- Over 31 million Chrysler, Jeep and Dodge owners would lose significant value in their cars and trucks, particularly due to questions about the ongoing availability of warranties and replacement parts and services;
- Local, state and federal governments will lose tens of billions of dollars in tax revenues, according to a research memorandum published by the Center for Automotive Research in November 2008;¹
- Over \$100 billion in annual sales will disappear from local economies; and
- Chrysler's first lien secured creditors will receive net present value recoveries of less than 38 cents on the dollar and possibly as little as 9 cents; the U.S. government, another secured creditor, will receive less than that; and Chrysler's unsecured creditors will receive nothing.

10. The economic and market conditions that led to the commencement of Chrysler's chapter 11 cases and the need for the proposed sale transaction are well known, but sobering nonetheless. The automotive market meltdown, the worst in at least 26 years,² disrupted Chrysler's substantial progress in implementing a long-term plan to reduce costs and transform its businesses for the next generation of cars. With sales plummeting and credit markets frozen, Chrysler undertook an intense effort to address the challenges it faced. After months of hard work and dedication by Chrysler's management, employees and advisors, working with all key stakeholders and with the support of the U.S. government, the Debtors have

¹ Daniel Cole, *et al.*, Center for Automotive Research Memorandum, *The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers*, at <http://www.cargroup.org> (Nov 4, 2008).

² Chris Isidore, *Auto Sales Are Worst in 26 Years. January Sales Tumble More Than Expected at GM, Ford and Toyota as Rental Car Companies Slash Purchases*, CNNMoney.com, Feb. 3, 2009 (4:22 p.m., ET).

commenced these cases to implement a prompt sale to preserve the going concern value of their businesses and return these businesses to viability under new ownership.

11. The proposed sale transaction would create the sixth-largest global automaker by volume unit, increasing competitiveness with other Original Equipment Manufacturers ("OEMs") and creating billions of dollars in synergies. The transaction is being financially backed by the United States Department of the Treasury (the "U.S. Treasury") and Export Development Canada, an affiliate of the Canadian government, which together will provide the new alliance with approximately \$6 billion of taxpayer money to start up and maintain operations. In addition to this unprecedented government support, virtually all of the major constituencies that would be affected by a Chrysler liquidation have recognized how devastating it would be and have made important concessions in support of the proposed alliance:

- The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") has agreed to wage and benefit reductions in the context of a sale to the new company, which would receive the benefit of a new collective bargaining agreement eliminating certain severance benefits, and would be a party to an agreement with the UAW containing restructured retiree health care benefits;
- Chrysler's dealers have agreed to reduce their dealer and service contract margins;
- Chrysler's already financially troubled suppliers have agreed to a further 3% price reduction and other measures that will save millions of dollars;
- Chrysler's largest secured creditors, JPMorgan Chase, Goldman Sachs, Morgan Stanley and Citigroup, have agreed to the transaction that would substantially compromise their first lien debt, comprising 70% of the \$6.9 billion total outstanding, for an estimated recovery of approximately 28 cents on the dollar; and
- Chrysler Parent's minority shareholder, Daimler AG ("Daimler"), has agreed as part of a settlement with Chrysler to (a) forgive \$1.5 billion of second lien debt, at the same time that \$500 million of second lien debt is forgiven by

majority shareholder Cerberus Capital Management L.P. ("Cerberus"); and (b) assist in funding Chrysler's pension plans.

Representatives of these constituencies have devoted the past six months to reaching these agreements.

12. As the culmination of these efforts, Chrysler, Fiat and New Chrysler (as defined below) have reached an agreement in principle and are expected to enter into a Master Transaction Agreement (collectively with other ancillary and supporting documents, the "Purchase Agreement") in short order. Pursuant to the Purchase Agreement, among other things: (a) Chrysler will transfer the majority of its operating assets to New CarCo Acquisition LLC ("New Chrysler"), a newly established Delaware limited liability company that currently is an indirect wholly-owned subsidiary of Fiat; and (b) in exchange for those assets, New Chrysler will assume certain liabilities of Chrysler and pay to Chrysler \$2 billion in cash (collectively with the other transactions contemplated by the Purchase Agreement, the "Fiat Transaction").

13. With the support of the U.S. government, Fiat, the UAW, dealers, suppliers and other stakeholders, the Debtors commenced these cases to implement an expeditious sale process to implement the Fiat Transaction, or a similar transaction with a competing bidder, designed to maximize the value of the Debtors' operations and businesses for the benefit of their stakeholders. Pending the proposed sale, the Debtors will idle most operations as they conserve their resources, while at the same time ensuring that (a) the facilities are prepared to resume normal production schedules quickly upon the completion of a sale and (b) consumers are not impacted by the filing.

14. Time is of the essence. Given the continuing stress on all aspects of the automotive industry and the idling of the Debtors' manufacturing facilities, key relationships with suppliers, dealers and other business partners simply cannot be preserved if the sale process

is not concluded quickly. Absent a prompt sale, approved and consummated in the coming weeks, the value of the Debtors' assets will rapidly decline and the ability to achieve a going concern sale will be irretrievably lost. By contrast, the proposed sale transaction, if it can be promptly consummated, will maximize the value available for stakeholders, will save hundreds of thousands of jobs and will strengthen the U.S. automotive sector and the economy generally.

Jurisdiction

15. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

16. Pursuant to sections 105(a), 363(b) and 503(b)(9) of the Bankruptcy Code, the Debtors hereby seek the entry of interim and final orders: (a) authorizing them (i) in their sole discretion and subject to the terms and conditions set forth herein, to pay, in the ordinary course of the Debtors' businesses, certain prepetition unsecured nonpriority claims (collectively, the "Essential Supplier Claims") of certain parties who supply goods or services critical to the going concern value of the Debtors' businesses or the consummation of a Sale Transaction (collectively, the "Essential Suppliers"); (ii) in their sole discretion, to pay claims for the value of goods received by the Debtors in the ordinary course of their businesses during the 20-day period prior to the Petition Date, which claims are entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code; (iii) to (A) continue their troubled supplier program (the "Troubled Supplier Program") and (B) in their sole discretion and subject to the terms and conditions set forth herein, pay certain prepetition unsecured nonpriority claims of certain troubled suppliers; (iv) to implement procedures to address those vendors who repudiate and refuse to honor their postpetition contractual obligations to the Debtors (the "Repudiating

Vendor Procedures"); and (v) to continue their participation in the Auto Supplier Support Program (the "Supplier Support Program") established by the U.S. Treasury to the extent such program remains in place after the Petition Date; and (b) granting related relief.

17. The Debtors have filed a consolidated memorandum of law (the "Memorandum of Law") and, before any hearing on this Motion, will file the Declaration of Scott Garberding (the "Garberding Declaration") in further support of this Motion and certain other requests for relief.

Basis for Relief

18. As set forth above, the Debtors are pursuing the prompt approval and consummation of a Sale Transaction. Pending such a sale, the Debtors intend to idle most operations as they conserve their resources, while at the same time ensuring that (a) their facilities are prepared to resume normal production schedules in connection with the consummation of a Sale Transaction and (b) consumers are not impacted by the filing (e.g., by continuing operations at parts depots to provide an uninterrupted supply of parts to service the Debtors' vehicles). The Debtors anticipate that the purchased manufacturing and assembly facilities will resume normal operations under ownership of New Chrysler.

19. During the short period between the Petition Date and the anticipated consummation of a Sale Transaction, the Debtors intend to make every effort to minimize the adverse effects of their chapter 11 filing on the transition of the Debtors' assets to New Chrysler or other purchaser (any such purchaser, the "Purchaser"). The Debtors intend to fulfill their fiduciary duties to maximize stakeholder recoveries by obtaining authority to pay those parties whose continuing survival and cooperation is necessary to avoid a delay or interruption in the transition of the Debtors' operating assets to the Purchaser or otherwise are critical to preserve the value of a Sale Transaction.

20. To that end, it is imperative that the Debtors obtain authority to make payments to suppliers to preserve the Debtors' supplier base. The Debtors' business of designing, assembling and selling cars cannot function without the unique, specially-designed parts produced by suppliers that are (a) not readily replaceable and (b) struggling to survive. In the face of perhaps the most challenging economic environment ever experienced by the automotive industry, the Debtors expect that they will have to provide as much financial support to their supplier base as reasonably possible under the circumstances pending the sale. The proposed payments to suppliers thus constitute an essential component of preserving going concern value and ensuring that these key business partners will be able to continue their business relationships with a Purchaser.

21. Obtaining the relief sought herein also is critical to the Debtors' ability to ensure that, after the Petition Date, their operating parts depots continue to receive an uninterrupted flow of service parts necessary to repair and maintain consumer vehicles on an ongoing basis.³ The supply of service parts is indispensable to preserving and protecting the going concern value of the Debtors' brands and businesses pending consummation of a Sale Transaction. During a period where all aspects of the Debtors' businesses are certain to be under intense public scrutiny, the inability of consumers of Chrysler, Jeep and Dodge brand vehicles to have their vehicles maintained and repaired without interruption would threaten a collapse in confidence in the Debtors' brands, which in turn would impair the going concern value of the

³ While a vehicle is in production, the Debtors often have certain extra parts manufactured and shipped to the Debtors' Mopar part distribution centers. These part distribution centers, which are anticipated to remain in operation as of the Petition Date and throughout these chapter 11 cases, provide parts to dealers and other authorized third parties for use in the repair of the Debtors' vehicles, thereby allowing the Debtors to honor their warranty obligations or perform necessary maintenance in the event of a vehicle recall or service campaign.

Debtors' businesses. The willingness and ability of the Debtors' suppliers to produce and ship service parts thus is essential to the Debtors' efforts to preserve the value of their chapter 11 estates.

22. Absent the relief sought herein, many suppliers may simply lack the financial wherewithal to continue in operation after a precipitous and unplanned period of nonpayment, particularly in light of the extraordinary economic pressures facing the automotive sector. By contrast, most vendors can manage their cash through a brief period of inactivity if cash payments are not interrupted suddenly. For this reason, among many others, it is the Debtors' intention to effect the Sale Transaction, and restore their ordinary course business relationships with suppliers, as rapidly as possible.⁴ An extended shutdown could cause suppliers irreparable harm; an expedited sale process and an abbreviated idling of the Debtors' facilities would mitigate such harm to a substantial degree (and, moreover, conserve much of the cash that otherwise would be used by the Debtors to make payments as requested herein). The best means to preserve the supplier base, and to minimize the Essential Supplier payments made to suppliers is for the Sale Transaction to be concluded quickly. Accordingly, the relief sought herein, in conjunction with a prompt sale process, is critical to the Debtors' efforts to preserve going concern value and the opportunity to complete a Sale Transaction for the benefit of stakeholders during a time of unprecedented uncertainty for both the Debtors and the automotive industry generally.

⁴ The need to approve and consummate the Sale Transaction as quickly as possible is described in greater detail in a separate motion to be filed to approve the sale (the "Sale Motion") and the Memorandum of Law, affidavits and declarations to be filed in support thereof.

23. It is the Debtors' intention, in connection with the consummation of a Sale Transaction, to assume the purchase orders and other contracts between the Debtors and the key vendors who are anticipated to provide goods and services to the Purchaser in connection with production to be restarted by the Purchaser. At the time of assumption, the relevant vendors will be entitled, pursuant to section 365 of the Bankruptcy Code, to cure of all outstanding defaults under such contracts, including most of the Essential Supplier Claims the Debtors seek authority to pay by this Motion. Accordingly, approval of the payment of such claims at this time generally will not alter the ultimate recovery for Essential Suppliers, but simply will alter the timing of such payments.

The Seamless Transfer of the Debtors' Facilities to the Purchaser and the Need for Service Parts Will Require the Timely Shipment of Goods From the Essential Suppliers

24. Maximizing the value of a Sale Transaction depends upon the seamless transition of the Debtors' facilities to the Purchaser and the preservation of the going concern value of the Debtors' brands and businesses. Thus, the Debtors will require the timely receipt of production parts, raw materials and other necessary goods and services from their suppliers in connection with the consummation of a Sale Transaction and the recommencement of operations. The Debtors do not produce raw materials in any capacity, have no capacity to manufacture certain parts necessary to the assembly of their vehicles and often do not possess the necessary equipment or technology to manufacture such parts. Accordingly, to ensure that their facilities are able to restart operations promptly upon the closing of a Sale Transaction, the

Debtors anticipate that suppliers will need to quickly ramp up production for the Purchaser after closing.⁵

25. In most cases, because of the highly engineered nature of the Debtors' vehicles, the goods and services purchased from suppliers for use in the operation of the Debtors' facilities (collectively, the "Single Source Goods and Services") are available, as a practical matter, only from a single supplier. In most instances, the Debtors do not have (and a Purchaser will not have) any viable alternatives to obtain substitute goods or services from other suppliers. Moreover, seeking to re-source necessary goods to a different supplier is impractical for various reasons (e.g., the unique and expensive equipment required to produce highly-engineered parts; passenger safety and reliability concerns). For these reasons, the Debtors have determined that, if they are going to effect a seamless transition of their manufacturing and assembly operations to the Purchaser and preserve the going concern value of their businesses, they must be able to satisfy the prepetition claims of the Essential Suppliers to ensure that these essential Single Source Goods and Services will continue to be available as necessary.

26. The Debtors believe that the risks to suppliers are mitigated in these chapter 11 cases in light of the pursuit of a prompt sale process to consummate a Sale Transaction by which most supplier agreements will be assumed and assigned to the Purchaser (and amounts outstanding on prepetition invoices eventually cured). Moreover, the Debtors

⁵ Recommencing the supply of goods and services without delay or interruption, moreover, will be crucial to re-implementing the "just-in-time" supply system expected to be utilized by the Purchaser. Coordinated, "just in time" supply systems (a) produce important cost savings for OEMs by minimizing storage costs and limiting the amount of funds tied up in raw materials and component parts and (b) require weekly, daily and even hourly shipments of particular products to keep automobile assembly lines operating. Re-mobilizing the Debtors' supply base prior to the transfer of assets to the Purchaser is thus crucial to the efficient operation of the Purchaser's supply chain and, thus, to the maximization of the value of any Sale Transaction.

expect that the continuing availability of the Supplier Support Program — pursuant to which the Debtors' suppliers may receive guarantees of, or advances upon, payment of certain of their Debtor-related receivables — further alleviates the financial pressure on their vendor constituency.

27. Nevertheless, the Debtors recognize that (a) their supplier base is on an exceedingly fragile footing and (b) the temporary idling of their facilities (and the associated reduction in their suppliers' production volumes) will subject their supplier base to potentially significant levels of financial stress as the steady flow of payments from the Debtors upon outstanding receivables is interrupted. As a result of the extraordinary financial stress on the industry at this time, the filing of these cases jeopardizes the survival of a great many of the Debtors' suppliers if payments are delayed pending the anticipated cure of outstanding defaults.

28. Accordingly, for the reasons outlined above, the Debtors are hereby seeking authority from the Court to implement a program to pay Essential Suppliers that is designed to promote as efficient and smooth a transfer of the Debtors' assets as possible under the circumstances, while limiting to the extent possible the amounts paid by the Debtors' estates.

The Identity of the Essential Suppliers

29. The Essential Suppliers the Debtors seek authority to pay pursuant to this Motion fall into two main categories: (a) "direct" production part suppliers (i.e., vendors that supply highly engineered component parts that are directly integrated into the Debtors' vehicles); and (b) "indirect" suppliers (i.e., suppliers that provide services or deliver goods that are not directly incorporated into the Debtors' vehicles). Detailed discussions of each category of suppliers are set forth in the Garberding Declaration. A brief overview of each category follows below.

30. Direct Production Part Suppliers. First, the Debtors seek authority to pay the claims of Essential Suppliers of (a) key component parts incorporated directly into the Debtors' vehicles or sub-assemblies during the Debtors' manufacturing and assembly processes or (b) service parts sold by the Debtors to dealerships or other parties authorized to repair the Debtors' vehicles (collectively, the "Direct Production Part Suppliers"). The components supplied by the Direct Production Part Suppliers (e.g., tires, bumpers, lighting equipment, axles, driveshafts, braking systems, engines, seats, windows and electronics) plainly are integral to the manufacture and assembly of automobiles and their availability is essential to the eventually resumed operations, and going concern value, of the Debtors' facilities. The majority of the Essential Suppliers that the Debtors would expect to benefit from any authority granted to the Debtors as a result of this Motion are Direct Production Part Suppliers.

31. The Debtors regularly transact business with Direct Production Part Suppliers located in developing "low cost" countries or regions such as China, Korea, India, Southeast Asia, Latin America, South America and Central Europe (collectively, the "LCCs"). With respect to certain goods (e.g., the wiring used in the Debtors' vehicles), the market and supply base for such goods exists only in the LCCs. Like the Debtors' domestic Direct Production Part Suppliers, certain of the Direct Production Part Suppliers in the LCCs are thinly capitalized, have precarious financial situations, are highly dependent upon the Debtors for their continued viability and can ill afford any loss of operating revenue.⁶

⁶ In addition, the Debtors believe that payments may need to be made to Direct Production Part Suppliers located in LCCs given their unique circumstances as foreign vendors. These foreign vendors often have confused and guarded reactions to the U.S. bankruptcy process, making them reluctant to cooperate. Moreover, jurisdictional issues limit the Debtors' ability to enforce their rights against such suppliers as may be necessary. In the meantime, there is the risk that such suppliers will seek a recovery from the Debtors' nondebtor subsidiaries.

32. It is extremely difficult to re-source a Direct Production Part Supplier. Detailed and rigorous internal inspection, testing and approval processes; regulatory testing regimens; intellectual property concerns; the need to rebuild necessary production tooling; and the potential enforcement of asserted lien rights against existing tooling all function to prolong the period between the Debtors' decision to re-source and the alternative supplier being ready to produce a production part. These issues are exacerbated with respect to Direct Production Part Suppliers located in LCCs, where, e.g., alternative suppliers wary of the U.S. bankruptcy process simply may decline to accept business from the Debtors. Even if an effort were made immediately, it is unlikely that the Debtors or a Purchaser would be able to re-source any but the simplest parts in the interim between the Petition Date and the consummation of a Sale Transaction.

33. The Debtors purchased nearly \$25.9 billion in production parts from their domestic Direct Production Part Suppliers in 2008. The Debtors estimate that, as of the Petition Date, the aggregate amount of prepetition claims held by Direct Production Part Suppliers is approximately \$1.71 billion.⁷

34. Indirect Suppliers. A substantial number of suppliers (collectively, the "Indirect Suppliers") provide the Debtors with services and goods that, while not directly

⁷ The overwhelming majority of the prepetition claims held by Direct Production Part Suppliers arise out of the delivery of production parts to the Debtors. The Debtors anticipate, however, that the Direct Production Part Suppliers also will seek to recover claims other than for the delivery of parts, such as claims arising out of certain amortized costs that the Direct Production Parts Suppliers were unable to recover due to the Debtors' cancellation of certain vehicle programs. Based upon past discussions with certain of their Direct Production Part Suppliers, the Debtors estimate that the amount of these non-production claims could be as much as 25% of the total of production-related claims. Although (a) these claims generally are unrelated to current production platforms and (b) the Debtors intend to dispute such non-production claims where valid disputes exist (and nothing herein should be construed as an admission by the Debtors regarding the validity of such claims), the Debtors anticipate that, in certain instances, the payment of certain of such non-production claims may be necessary to fulfill the purposes of this Motion.

incorporated into the Debtors' vehicles, are nevertheless indispensable to the production of such vehicles (e.g., perishable tools, maintenance materials such as lubricants and gasoline required to power, utilize and maintain the Debtors' equipment and machinery, maintenance and repair services, services related to the Debtors' engineering and research and development efforts). The constant need to repair the Debtors' machinery and equipment and the non-"catalogue" nature of many of the perishable items used by the Debtors while operating, among other things, will require renewed access to the goods and services provided by the Indirect Suppliers upon the recommencement of the Debtors' operations.

35. The Debtors estimate that they paid approximately \$3.3 billion to Indirect Suppliers in 2008. The Debtors estimate that, as of the Petition Date, the aggregate amount of prepetition claims held by Indirect Suppliers was approximately \$600 million.

Conclusion

36. All Essential Suppliers provide goods and services necessary to the Debtors' ability to (a) restart operations at their manufacturing and assembly facilities in connection with a Sale Transaction and (b) preserve supplier, dealer and consumer confidence in Chrysler, Jeep and Dodge brand vehicles after the Petition Date through the provision of necessary service parts. Moreover, the survival of the Essential Suppliers to provide goods and services to the Purchaser is essential to preserve the going concern value of the Debtors' businesses. As such, the Debtors have determined, in the exercise of their business judgment, that obtaining authority to pay the Essential Suppliers in their sole discretion is critical to avoid a significant diminution in the value of their estates and their ability to maximize stakeholder recoveries through a Sale Transaction.

37. The Debtors' management and employees, in consultation with their professionals, have held numerous internal meetings and have exercised high levels of care in

reviewing the facts and circumstances of their Essential Suppliers. As a result of these meetings and analysis, the Debtors have identified the vendors (a) that would constitute Essential Suppliers under the descriptions set forth above and (b) the payment of whom would benefit the Debtors' chapter 11 estates by promoting the successful consummation of a Sale Transaction. The Debtors intend to require clear prospective commitments from these vendors to supply both the Debtors and the Purchaser (as applicable) in exchange for, and as a condition to, the payment of the Essential Supplier Claims, as discussed in detail below.

38. The Debtors, therefore, seek authority to pay the prepetition claims of the Essential Suppliers, in their sole discretion, to the extent such payment is permitted by, and consistent with the terms of the Debtors' proposed postpetition financing facility (the "DIP Financing Facility").⁸ Given the scope of the Debtors' operations, and the importance of preserving the supplier body to consummate a Sale Transaction on a going concern basis, the Debtors submit that the exercise of such authority would be a reasonable and appropriate expenditure of estate funds.

39. Bankruptcy courts in this District and elsewhere in automotive chapter 11 cases have granted relief similar to that requested in this Motion. See In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006 and Mar. 29, 2006) (orders authorizing the debtors to pay the prepetition claims of certain essential suppliers up to \$52.1 million); In re Delphi Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005) (order authorizing the debtors to continue vendor rescue program and payment of \$90 million in prepetition claims of financially distressed sole source suppliers and vendors); In re Tower Auto., Inc., 05-10578

⁸ Concurrently with the filing of this Motion, the Debtors have filed a motion seeking approval of up to \$4.5 billion in debtor in possession financing from the U.S. Treasury and Export Development Canada.

(ALG) (Bankr. S.D.N.Y. Mar. 14, 2005) (order authorizing the debtors to pay \$40 million in prepetition claims of essential suppliers); accord In re Cadence Innovation LLC, No. 08-11973 (KG) (Bankr. D. Del. Aug. 27, 2008) (authorizing payment of prepetition claims of essential suppliers); In re Internet Corp., No. 08-11859 (KG) (Bankr. D. Del. Aug. 14, 2008) (order authorizing, among other things, payment of prepetition claims of essential trade vendors); In re Dura Auto. Sys., Inc., No. 06-11202 (KJC) (Bankr. D. Del. Nov. 20, 2006) (order authorizing, among other things, payment of \$29 million in prepetition claims of critical vendors).⁹ As noted above, the Debtors also have filed the Memorandum of Law in further support of the relief requested herein.

Conditions on Payment of Essential Supplier Claims

40. In an effort to ensure that the payment of any Essential Supplier Claim provides the maximum benefit to the Debtors' chapter 11 estates and ultimately enhances the distributions made to their stakeholders, the Debtors propose that each recipient of a payment of an Essential Supplier Claim (an "Essential Supplier Payment") be required, without interruption and through the end of any applicable vehicle's program life (including any continuing obligation to produce service parts), to the extent applicable, to: (a) continue its existing business relationship with the Debtors pending the closing of a Sale Transaction and, after such a closing, with the Purchaser on such terms as are acceptable to the Debtors in their business judgment; (b) continue to (i) extend normalized trade credit to the Debtors pending the closing of a Sale Transaction and, after such a closing, to the Purchaser and (ii) provide other business terms to

⁹ Because of the voluminous nature of the unreported orders cited above (as well as those cited elsewhere in this Motion), they are not attached to this Motion. Copies of all unreported orders cited herein will be made available to the Court at or prior to the hearing on this Motion and are available to other parties upon request from counsel to the Debtors.

such parties (as applicable) on a prospective basis (consistent with past practices and subject to adjustments and modifications contemplated by the applicable purchase order), including with respect to any applicable credit limits, the pricing of goods and services and the provision of equivalent levels of service, all on terms at least as favorable as those extended to the Debtors prepetition or on such other terms that are acceptable to the Debtors in their business judgment; (c) agree that the Debtors' standard terms and conditions (i) continue to govern the Essential Supplier's commercial relationship with the Debtors pending the closing of a Sale Transaction and (ii) shall govern the Essential Supplier's commercial relationship with the Purchaser after such a closing; (d) agree to release to the Debtors (or the Purchaser) as requested goods or other assets of the Debtors in the Essential Supplier's possession, and confirm that such supplier has no lien on any production tooling based upon the Debtors' nonpayment of prepetition claims; and (e) agree not to contest the assumption (and subsequent assignment to the Purchaser) of any purchase order issued by the Debtors to such Essential Supplier on the grounds that such purchase order is not an executory contract or on any other grounds (other than the failure of a Purchaser other than New Chrysler to provide adequate assurance of future performance) (collectively, the "Trade Terms").

41. If an Essential Supplier accepts an Essential Supplier Payment and fails to provide the requisite Trade Terms, then (a) any Essential Supplier Payment received by the Essential Supplier shall be deemed an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (i) recover from the Essential Supplier in cash or goods or (ii) at the Debtors' option, apply against any outstanding administrative claim held by such Essential Supplier; and (b) upon recovery of any Essential Supplier Payment, the

corresponding prepetition claim of the Essential Supplier will be reinstated in the amount recovered by the Debtors.

42. The Debtors shall implement and provide notice of the conditions set forth in paragraphs 40 and 41 above through the following procedures:

- The Debtors may require an Essential Supplier to execute an agreement (a "Trade Agreement") prior to its receipt of an Essential Supplier Payment that (a) confirms that the Essential Supplier agrees to be bound by the Trade Terms, (b) confirms that the Essential Supplier has received and agrees to be bound by the order granting this Motion and (c) contains such other terms and conditions as the Debtors believe proper, including confidentiality provisions.
- If no Trade Agreement is executed, any payment pursuant to which an Essential Supplier Payment is made will be accompanied by (a) a notice from the Debtors explaining that acceptance of the payment by the Essential Supplier constitutes its agreement to provide the Trade Terms and explaining the consequences of its failure to comply with such agreement and (b) a copy of the order granting this Motion (collectively, the "Essential Supplier Information").
- In the Debtors' sole discretion, any check issued on account of an Essential Supplier Payment may include a restrictive endorsement on the back of the check substantially as follows:

By accepting this check, the payee agrees (a) to provide the payor and its affiliates, or any purchaser of substantially all of the payor's assets, with normalized trade credit and provide other business terms on a prospective basis (consistent with past practices), including with respect to any applicable credit limits, pricing and the provision of equivalent levels of service, on terms at least as favorable as those extended to the payor and its affiliates prior to the commencement of payor's chapter 11 case, identified as Case No. 09-50002 (AJG) and pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), or as are otherwise acceptable to the payor or the purchaser (as applicable), for the duration of any applicable vehicle's program life (including any continuing obligation to produce service parts), and (b) upon request, to release to payor, or any purchaser of substantially all of the payor's assets, any property of payor in payee's possession. Payee

hereby submits to the jurisdiction of the Bankruptcy Court for the enforcement of such agreement.

Request to Continue Troubled Supplier Program and Honor or Pay Existing Obligations

43. In light of the substantial financial difficulties faced by the entire automotive industry (particularly in the last two years), the Debtors have dealt with the financial distress of a substantial number of their suppliers in the ordinary course of the Debtors' businesses. In the automotive industry, when a supplier faces financial distress, one common outcome is the negotiation of, and entry into, an agreement or agreements between the troubled supplier and its customers designed to alleviate that distress (any such agreement, an "Accommodation Agreement").¹⁰ The Debtors have negotiated and entered into more than 20 Accommodation Agreements in the past two years, and continue to have various obligations outstanding under those agreements.¹¹

¹⁰ While any particular Accommodation Agreement will contain provisions specific to the relevant troubled supplier or customer, a standard Accommodation Agreement might include some or all of the following kinds of provisions: (a) increased pricing for the supplier; (b) provision for a one time payment to the supplier; (c) provision of secured or unsecured funding to the supplier by the customer; (d) shortening of payment terms paid by customers to the supplier; (e) a commitment by the supplier to continue manufacturing products for the customer; (f) agreements regarding the customer's ability/inability (depending on the negotiations) to re source the supplier; (g) the right of customers to access the supplier's facility, books and records and meet and confer with officers; (h) an acknowledgement that tooling utilized to manufacture parts is owned by the customers and not the supplier, and providing for its removal by the customers; (i) the option for the customer to purchase supplier owned tooling, machinery and capital equipment at reasonable pricing; (j) the right of the customers to enter into and operate the supplier's facility upon the occurrence of certain events; and/or (k) a requirement that a parts bank be built by the supplier upon a customer's request.

¹¹ In light of the regularity with which the Debtors enter into such agreements, the Debtors believe that their entry into Accommodation Agreements going forward (to the extent that they do not authorize the payment of prepetition claims) will be ordinary course transactions permitted pursuant to section 363(c) of the Bankruptcy Code without the need for authorization from this Court. The Debtors are seeking the relief requested herein to make it clear to their Essential Suppliers that the Debtors may continue this established business practice without seeking separate Court approval of each new Accommodation Agreement.

44. As described in detail above, the Debtors anticipate that the commencement of these chapter 11 cases and macroeconomic conditions generally (including the temporary idling of the Debtors' facilities, the credit crisis and the particular financial distress being experienced in the automotive industry) will cause a number of their suppliers to experience acute financial distress in the upcoming weeks. Moreover, a bankruptcy filing or suspension of operations by another OEM would exacerbate this distress to a potentially unsustainable degree.

45. By this Motion, as part of the relief sought for Essential Suppliers generally, the Debtors request relief authorizing, but not requiring, them to continue their Troubled Supplier Program, including, in their sole discretion, negotiating and entering into new Accommodation Agreements with troubled suppliers that are Essential Suppliers.¹² The Debtors request the authority, under existing and new Accommodation Agreements, to (a) pay prepetition unsecured nonpriority claims and (b) extend secured and unsecured financing to troubled suppliers, up to a maximum aggregate amount of \$550 million (to the extent such payments and financing are permitted by, and consistent with, the terms of the DIP Financing Facility).¹³

46. At least one bankruptcy court within this District has granted relief similar to that requested in this Motion with respect to the Troubled Supplier Program. See In re Delphi

¹² With respect to existing Accommodation Agreements, the Debtors, in their sole discretion, intend to require a supplier to enter into a Trade Agreement as a precondition to the payment of any Essential Supplier Claims pursuant to any existing Accommodation Agreement. With respect to any new Accommodation Agreements, the Debtors will not enter into any such agreements unless the supplier demonstrates the existence of severe financial distress in form and amount compelling to the Debtors or their advisors.

The Debtors reserve their right to assume or reject any existing Accommodation Agreements and are not, by this Motion, pledging that all obligations under such agreements will be honored.

¹³ Any prepetition claims paid in connection with the Troubled Supplier Program are also Essential Supplier Claims as described above. Thus, a large percentage of the \$550 million amount identified above is simply a subset of, and not accretive to, the universe of Essential Supplier Claims generally.

Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005) (order authorizing the debtors to continue "Vendor Rescue Program" providing for payment of debtors' most financially troubled suppliers).

Request to Continue Participation in the Supplier Support Program

47. On March 30, 2009, President Obama announced the establishment of the Supplier Support Program by the U.S. Treasury. The Supplier Support Program is intended to provide liquidity for certain qualifying automotive suppliers and contemplates the guarantee, or early payment, of qualified automotive receivables through an OEM's establishment of a bankruptcy-remote special purpose vehicle funded with loans from the U.S. Treasury and capital contributions from the OEM. This special purpose vehicle purchases eligible automotive receivables from tendering suppliers in exchange for a payment either immediately (at a 3% discount from face value) or at maturity (at a 2% discount from face value).

48. On April 2, 2009, to participate in the Supplier Support Program, the Debtors formed nondebtor Chrysler Receivables SPV, LLC (the "Receivables SPV"), to which entity the Debtors' suppliers could sell their outstanding receivables. In accordance with the terms of the Supplier Support Program, the Debtors' contributed \$15 million in capital to the Receivables SPV on April 16, 2009, and have contributed a total of \$50 million thereto as of the Petition Date. Although the Supplier Support Program may be terminated by the U.S. Treasury as a result of the Debtors' chapter 11 cases, the Debtors anticipate that the Supplier Support Program will remain open for a period of time postpetition pursuant to the terms of a forbearance agreement (the "Forbearance Agreement") currently being negotiated by the U.S. Treasury and

the Receivables SPV.¹⁴ If the Supplier Support Program continues, the Debtors will be obligated on a prospective basis to make capital contributions to the Receivables SPV so that the aggregate amount of all capital contributions made to the Receivables SPV equal 5% of the sum of (a) all loans outstanding under the financing facility plus (b) exposure for accounts receivable purchased by the Receivables SPV but not yet paid for (to the extent such amount has not already been funded).

49. The availability of the Supplier Support Program and the ability of the Debtors' suppliers to receive payment from the Receivables SPV promises to mitigate the amounts that the Debtors might otherwise have to pay to their suppliers pursuant to the relief sought herein by decreasing the cost to the Debtors of retiring such receivables. Generally, the Debtors would have to fund approximately only 5% of a receivable's discounted face value to have that receivable retired and the corresponding supplier financially supported.¹⁵

50. The Debtors recognize that their participation in the Supplier Support Program, and, specifically, their capital contributions to the Receivables SPV may constitute the payment of prepetition claims. The Debtors submit, however, that the benefits conferred on their

¹⁴ Receivables purchased by the Receivables SPV prior to the Petition Date will be honored and paid by the Receivables SPV, regardless of the U.S. Treasury's ultimate decision with respect to the postpetition continuance of the Supplier Support Program. Although the Forbearance Agreement is between the U.S. Treasury and a nondebtor, the Debtors nevertheless request authority out of an abundance of caution to authorize the Debtors to take such actions as are necessary to cause the Receivables SPV to enter into the Forbearance Agreement.

¹⁵ The availability of the Supplier Support Program, however, does not obviate the need for the other relief requested herein. For example, many suppliers may be unable to take advantage of the Supplier Support Program for various business and legal reasons (e.g., certain suppliers may be constrained by the terms of financing agreements; currency reasons; an entity's formation outside of the United States). Other suppliers, moreover, may be unwilling or unwilling to accept the discount from face value that accompanies tender of receivables to the Receivables SPV. In any event, the Supplier Support Program is of limited size and, despite the anticipated execution of the Forbearance Agreement, there is no assurance that it will remain available postpetition.

chapter 11 estates achieved through participation more than justifies the required expenditure. Accordingly, the Debtors request the authority, in their sole discretion and in the ordinary course of their businesses, to continue their participation in the Supplier Support Program as long as it remains open and to make payments in connection therewith to the extent such payments are consistent with the terms of the Debtors' postpetition financing facility.

**Request for Authority to Pay Claims Under
Section 503(b)(9) of the Bankruptcy Code in the Debtors' Sole Discretion**

51. Under section 503(b)(9) of the Bankruptcy Code, claims for the value of goods received by the Debtors in the ordinary course of their businesses during the 20-day period immediately prior to the Petition Date are entitled to administrative priority status (the "Twenty-Day Administrative Claims"). As administrative claims incurred in the ordinary course of the Debtors' businesses, the Debtors arguably are authorized to pay Twenty-Day Administrative Claims pursuant to sections 363(c)(1) of the Bankruptcy Code without the need for court approval (and regardless of whether the claimant is an Essential Supplier). As such claims are prepetition claims, however, the Debtors also believe that they are not *required* to reconcile or pay the Twenty-Day Administrative Claims prior to the conclusion of these cases.¹⁶

¹⁶ When a debtor has not paid an administrative expense claim under section 363(c) of the Bankruptcy Code, the timing of payment of an administrative claim is within the sound discretion of the bankruptcy court. Sapir v. C.P.O. Colorchrome Corp., a Div. of Coppinger Color Lab (In re Photo Promotion Assocs., Inc.), 881 F.2d 6, 8-9 (2d Cir. 1989); In re Continental Airlines, Inc., 146 B.R. 520, 531 (Bankr. D. Del. 1992). Applying such discretion, "[m]ost courts postpone actual payment until confirmation of a plan." Continental Airlines, 146 B.R. at 531 (citing In re Cardinal Indus., Inc., 109 B.R. 738, 743 (Bankr. S.D. Ohio 1989)) (payment of post-rejection rent claims and all other administrative claims should be deferred to plan confirmation); In re Budget Uniform, Inc., 71 B.R. 652, 654 (Bankr. E.D. Pa. 1987) ("As with any administrative claim, the respondent must wait for confirmation of a plan before becoming entitled to payment.") (emphasis added)).

Courts have expressly extended this reasoning to the payment of Twenty-Day Administrative Claims. See, e.g., In re Global Home Prods., LLC, No. 06-10340, 2006 Bankr. LEXIS 3608, at *10 (Bankr. D. Del. Dec. 21, 2006) (holding that the timing of payments under Bankruptcy Code section 503(b)(9) is left to the discretion of the court); In re Bookbinders' Rest., Inc., No. 06-12302ELF, 2006 Bankr. LEXIS 3749, at *10

Indeed, in the interest of preserving their cash prior to the closing of a Sale Transaction (and in anticipation of a significant percentage of Twenty-Day Administrative Claims ultimately being satisfied in connection with, or as a result of, the assumption and assignment of the underlying purchase orders to the Purchaser), the Debtors intend to pay Twenty-Day Administrative Claims sparingly, using a rationale similar to that articulated above with respect to Essential Suppliers. For the avoidance of doubt, however, the Debtors request that the Court enter an order clarifying that the Debtors are authorized, but not required, to pay the Twenty-Day Administrative Claims, or any portion thereof, of any claimant in the ordinary course of the Debtors' businesses and on such terms and conditions as the Debtors deem appropriate.

52. The Debtors estimate the aggregate total of Twenty-Day Administrative Claims outstanding as of the Petition Date to be approximately \$800 million.

53. Bankruptcy courts in this District and elsewhere have granted relief similar to that requested in this Motion with respect to Twenty-Day Administrative Claims. See, e.g., In re Frontier Airlines Holdings, Inc., No. 08-11298 (RDD) (Bankr. S.D.N.Y. May 15, 2008) (order authorizing payment of prepetition claims entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006 and Mar. 29, 2006) (interim and final orders authorizing

(continued...)

(Bankr. E.D. Pa. Dec. 28, 2006) (concluding that "in enacting § 503(b)(9), Congress did not intend to alter existing practice under 11 U.S.C. § 503(b).").

In this vein, contemporaneously with the filing of this Motion, the Debtors filed the Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a) and 503 of the Bankruptcy Code and Bankruptcy Rules 3002 and 3003, for an Order Establishing Procedures for the Assertion of Section 503(b)(9) Claims Relating to Goods Received by the Debtors Within Twenty Days Prior to the Petition Date (the "503(b)(9) Claim Procedures Motion"). In the 503(b)(9) Claim Procedures Motion, the Debtors have requested an order establishing an orderly process for the assertion of Twenty-Day Administrative Claims.

the debtors to pay 20-day administrative claims in their sole discretion without the need for further court approval); accord In re Dura Auto. Sys., Inc., No. 06-11202 (KJC) (Bankr. D. Del. Nov. 20, 2006) (order authorizing the debtors to pay 20-day administrative claims in their sole discretion without the need for further court approval).

Request for Approval of Repudiating Vendor Procedures

54. In addition, the Debtors seek authority to pay, on a conditional basis, certain claims of vendors that have contractual obligations to the Debtors but that nevertheless may refuse to honor such obligations on a postpetition basis in an effort to extract the payment of prepetition claims by the Debtors (collectively, the "Repudiating Vendors").

55. The majority of the Debtors' suppliers, including some of the Debtors' largest suppliers, provide the Debtors with goods and services pursuant to executory contracts. Under section 365 of the Bankruptcy Code, a debtor can "force others to continue to do business with it when the bankruptcy filing might otherwise make them reluctant to do so . . . making the debtor's rehabilitation more likely." City of Covington v. Covington Landing Ltd., 71 F.3d 1221, 1226 (6th Cir. 1995) (citing Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1310 (5th Cir. 1985)); see also CIT Commc'ns Fin. Corp. v. Midway Airlines Corp. (In re Midway Airlines Corp.), 406 F.3d 229, 234 (4th Cir. 2005) (stating that "the trustee can force the lessor to continue performing under the lease"); Gwinnett Prado, L.P. v. Rhodes, Inc. (In re Rhodes, Inc.), 321 B.R. 80, 91 (Bankr. N.D. Ga. 2005) ("As a general proposition, the non-debtor party to an unexpired lease or other executory contract is obliged to perform it until it is assumed or rejected."); In re Nat'l Steel Corp., 316 B.R. 287, 305 (Bankr. N.D. Ill. 2004) (stating that "most courts agree that before an executory contract is assumed or rejected under § 365(a), that contract continues to exist, enforceable by the debtor-in-possession, but not enforceable against the debtor-in-possession."); Krafsur v. UOP (In re El Paso Refinery, L.P.), 196 B.R. 58, 72 (Bankr.

W.D. Tex. 1996) ("The [Bankruptcy] Code places an independent duty on the non-debtor to continue the performance of an executory contract until it is assumed or rejected *Whether the debtor performs or not, the non-debtor must perform until assumption or rejection.*") (emphasis added); McLean Indus., Inc. v. Medical Lab. Automation, Inc. (In re McLean Indus., Inc.), 96 B.R. 440, 447-50 (Bankr. S.D.N.Y. 1989) (same).¹⁷ Because such entities are required to perform their postpetition obligations under executory contracts with the Debtors, they are prohibited by the Bankruptcy Code from ceasing performance or threatening to do so.

56. Notwithstanding the above, it is expected that some contract parties — the Repudiating Vendors — may be requested to provide necessary goods or services (e.g., service parts) to the Debtors while their operations are idled, but refuse to perform their contractual obligations unless first paid the amount of their prepetition claims. In light of the impairment of the value of a Sale Transaction that could be caused by such a refusal, the Debtors seek authority to pay such Repudiating Vendors on a conditional basis. If such a payment is made, the Debtors propose that the following Repudiating Vendor Procedures be implemented:

- If a Repudiating Vendor refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code because the Debtors have failed to pay its prepetition claim, the Debtors are authorized to pay such claim provisionally (a "Provisional Payment"), so long as, within three business days of payment, the Debtors file a Notice of Repudiating Vendor and seek the entry of an Order to Show Cause (as such terms are defined below).
- If a Repudiating Vendor refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the

¹⁷ In fact, a refusal by a nondebtor to perform postpetition under a prepetition executory contract also may be a violation of the automatic stay, pursuant to section 362 of the Bankruptcy Code. See generally 3 Collier on Bankruptcy ¶ 362.03 (Alan N. Resnick and Henry J. Sommer eds. 15th ed. rev. 2008) ("As property of the estate, the debtor's interests in . . . [executory] contracts or leases are protected against termination or other interference that would have the effect of removing or hindering the debtor's rights in violation of section 362(a)(3).").

Bankruptcy Code, the Debtors may (whether or not they make the Provisional Payment described above): (a) file a notice (a "Notice of Repudiating Vendor"), substantially in the form attached hereto as Exhibit A, setting forth the Debtors' belief that the vendor is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the vendor, the identity of the agreement in question and, if any Provisional Payments were made, the amounts and date of such payments; and (b) seek the entry of an order (the "Order to Show Cause"), substantially in the form attached hereto as Exhibit B, requiring the Repudiating Vendor to appear before the Court, to show cause why it should not be found to have willfully violated sections 362 and 365 of the Bankruptcy Code and why it should not be required to return any Provisional Payment made to it by the Debtors.

57. Bankruptcy courts in this District and elsewhere have granted relief similar to that requested with respect to Repudiating Vendors. See In re Lyondell Chem. Co., No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 9, 2009 and Jan. 23, 2009) (interim and final orders authorizing the debtors to obtain similar relief with respect to recalcitrant vendors); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006 and Mar. 29, 2006) (interim and final orders authorizing the debtors to obtain similar relief with respect to recalcitrant vendors); In re Delphi Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005) (order authorizing the debtors to make provisional payments to "Non-Conforming Suppliers" subject to conditions similar to those outlined above); accord In re Aleris Int'l, Inc., No. 09-10478 (BLS) (Bankr. D. Del. Feb. 13, 2009 & Mar. 10, 2009) (interim and final orders authorizing the debtors to obtain similar relief with respect to recalcitrant vendors).

**Request for Authority for Banks to Honor and
Pay Checks and Funds Transfers Related to Essential Supplier Claims**

58. In addition, by this Motion, the Debtors request that all applicable banks and other financial institutions be authorized and directed, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, Essential Supplier Claims, Twenty-Day Administrative Claims and Provisional Payments, whether such

checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

The Debtors represent that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payment of Essential Supplier Claims, Twenty-Day Administrative Claims and Provisional Payments. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

59. The Debtors further represent that they have anticipated access to sufficient debtor in possession financing to pay all Essential Supplier Claims, Twenty-Day Administrative Claims and Provisional Payments, to the extent described herein and consistent with the terms of their DIP Financing Facility.

60. Nothing contained herein is intended or should be construed as: (a) an admission as to the amount, validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim constitutes an Essential Supplier Claim, a Twenty-Day Administrative Claim or a valid reclamation claim; or (e) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

Requests for Immediate Relief and Waiver of Stay

61. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek (a) immediate entry of an interim order granting the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose

before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtors' estates, the Court may allow the Debtors to pay all or part of a claim that arose before the Petition Date prior to the twenty-first day following the Petition Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise."

62. As set forth above, the payment of Essential Supplier Claims, Twenty-Day Administrative Claims and Provisional Payments is necessary to prevent the immediate and irreparable damage to the Debtors' brands and going concern value and, thus, to the Debtors' ability to consummate a Sale Transaction, that would result from the Debtors' inability to preserve their supplier body and obtain indispensable goods and services (e.g., service parts necessary to repair and maintain the Debtors' vehicles) as needed in the initial weeks of these chapter 11 cases. Accordingly, the Debtors submit that ample cause exists to justify: (a) the immediate entry of an interim order granting the relief sought herein pursuant to Bankruptcy Rule 6003(b); and (b) a waiver of the ten-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Notice

63. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been given to: (a) the U.S. Trustee; (b) the creditors holding the 50 largest unsecured claims against the Debtors' estates, as identified in the Debtors' chapter 11 petitions; (c) counsel to the administrative agent for the Debtors' prepetition senior secured lenders; (d) counsel to Cerberus; (e) counsel to Daimler; (f) counsel to the UAW; and (g) counsel to the U.S. Treasury. The Debtors submit that no other or further notice need be provided.

No Prior Request

64. No prior request for the relief sought in this Motion has been made to this or any other Court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that this Court: (i) enter an interim order substantially in the form attached hereto as Exhibit C, granting the relief sought herein on an interim basis; (ii) enter a final order substantially in the form attached hereto as Exhibit D granting the relief sought herein on a final basis; and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: April 30, 2009
New York, New York

Respectfully submitted,

/s/ Corinne Ball

Corinne Ball
Veerle Roovers
JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

David G. Heiman
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

Jeffrey B. Ellman
JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309

PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
Corinne Ball
Veerle Roovers

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
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1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309
Jeffrey B. Ellman

Proposed Attorneys for Debtors
and Debtors in Possession

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

-----X
In re : Chapter 11
Chrysler LLC, *et al.*,¹ : Case No. 09-50002 (AJG)
Debtors. : (Jointly Administered)
-----X

NOTICE OF REPUDIATING VENDOR

PLEASE TAKE NOTICE OF THE FOLLOWING:

¹ A list of the Debtors, their addresses and tax identification numbers is located on the docket for Case No. 09-50002 (AJG) Docket No. _____ and also can be found at <http://chapter11.epiqsystems.com/chrysler>.

1. On April 30, 2009, Chrysler LLC and 24 of its domestic direct and indirect subsidiaries (collectively, the "Debtors"), filed their Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 363(b) and 503(b)(9) of the Bankruptcy Code, for Interim and Final Orders Authorizing Them to Pay the Prepetition Claims of Certain Essential Suppliers and Administrative Claimholders, Continuing the Debtors' Troubled Supplier Program and Granting Certain Related Relief (the "Motion"). On [_____], 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order granting the relief requested in the Motion on [**an interim/a final**] basis (D.I. [_____]) (the "Order").

2. Pursuant to paragraph 9 of the Order, the Debtors have identified _____ (the "Vendor") as a Repudiating Vendor with respect to its obligations under the [**name of agreement**]. [**Accordingly, the Debtors have conditionally paid the Vendor's claim in the amount of \$_____, on _____, 20[___] (the "Provisional Payment").**]

3. Contemporaneously herewith the Debtors are filing a proposed Order to Show Cause requesting that the Bankruptcy Court order the Vendor to appear before the Bankruptcy Court at a hearing to be held at _____.m., Eastern Time, on _____, 2009, before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, in the Bankruptcy Court, Courtroom 523, One Bowling Green, New York, New York 10004-1408 and demonstrate why the Vendor should not be held in violation of sections 362 and 365 of title 11 of the United States Code [**, and why the Vendor should not be required to return the Provisional Payment**].

Dated: _____
New York, New York

Respectfully submitted,

Corinne Ball
Veerle Roovers
JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

David G. Heiman
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

Jeffrey B. Ellman
JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309

PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT B

JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
Corinne Ball
Veerle Roovers

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman

JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309
Jeffrey B. Ellman

Proposed Attorneys for Debtors
and Debtors in Possession

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

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

ORDER TO SHOW CAUSE

This matter coming before the Court on the Notice of Repudiating Vendor dated _____, 2009 (D.I. _____) (the "Notice") filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Court having reviewed the Notice and the [**Interim/Final**] Order, Pursuant to Section 105(a), 363(b) and 503(b)(9) of the Bankruptcy Code Authorizing the Debtors to Pay the Prepetition Claims of Certain Essential Suppliers and

Administrative Claimholders, Continuing the Debtors' Troubled Supplier Program and Granting Certain Related Relief (the "Order") pursuant to which the Notice was filed; and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) the Notice provided for herein is sufficient under the circumstances and (iv) the Debtors have complied with the terms and conditions set forth in the Order;

IT IS HEREBY ORDERED THAT:

1. _____, who is identified by the Debtors as a Repudiating Vendor in the Notice (the "Vendor"), is hereby ordered, at a hearing to be conducted before this Court at _____ a.m., Eastern Time on, _____, 2009, before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, in the Bankruptcy Court, Courtroom 523, One Bowling Green, New York, New York 10004-1408 (the "Hearing"), to show cause why the Vendor should not be (a) held in violation of sections 362 and 365 of title 11 of the United States Code (the "Bankruptcy Code") for willfully threatening to withhold essential goods or services from the Debtors under one or more contracts between the Debtors and Vendor, as identified in the Notice and (b) required to return any Provisional Payment (as such term is defined in the Order) made to it by the Debtors pursuant to section 549 of the Bankruptcy Code.

2. Service of this Order to Show Cause is to be made by the Debtors upon (a) the Vendor, (b) the Office of the United States Trustee for the Southern District of New York, (c) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code; (d) counsel to the administrative agent for the Debtors' prepetition senior secured lenders; and (e) counsel to the U.S. Treasury.

3. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____
New York, New York

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

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

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

**INTERIM ORDER, PURSUANT TO SECTIONS 105(a), 363(b) AND 503(b)(9)
OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTORS TO PAY
THE PREPETITION CLAIMS OF CERTAIN ESSENTIAL SUPPLIERS AND
ADMINISTRATIVE CLAIMHOLDERS, CONTINUING THE DEBTORS'
TROUBLED SUPPLIER PROGRAM AND GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 363(b) and 503(b)(9) of the Bankruptcy Code, for Interim and Final Orders Authorizing Them to Pay the Prepetition Claims of Certain Essential Suppliers and Administrative Claimholders, Continuing the Debtors' Troubled Supplier Program and Granting Certain Related Relief (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Memorandum of Law, the Declaration of Scott Garberding (the "Garberding Declaration") and the Affidavit of Ronald E. Kolka in Support of First Day Motions (the "Kolka Affidavit") and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) notice of the Motion and the Hearing was sufficient under the

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

circumstances, (iv) there is good cause to waive the ten-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; (v) the payment of any Essential Supplier Claims on the terms and conditions set forth herein is necessary and appropriate to preserve the value of the Debtors' assets, brands, businesses and estates for the benefit of all stakeholders; and (vi) the requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order; and the Court having determined that the legal and factual bases set forth in the Motion, the Memorandum of Law, the Garberding Declaration and the Kolka Affidavit and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, on an interim basis, solely to the extent set forth below.
2. The Debtors are authorized, in their sole discretion and in the ordinary course of their businesses, to pay Essential Supplier Claims to the extent such payments are permitted by, and consistent with, the terms of the DIP Financing Facility.
3. Each recipient of an Essential Supplier Payment authorized by this Interim Order shall be required, without interruption and through the end of any applicable vehicle's program life (including any continuing obligation to produce service parts), to the extent applicable, to: (a) continue its existing business relationship with the Debtors pending the closing of a Sale Transaction and, after such a closing, with the Purchaser on such terms as are acceptable to the Debtors in their business judgment; (b) continue to (i) extend normalized trade credit to the Debtors pending the closing of a Sale Transaction and, after such a closing, to the Purchaser and (ii) provide other business terms to such parties (as applicable) on a prospective basis (consistent with past practices and subject to adjustments and modifications contemplated

by the applicable purchase order), including with respect to any applicable credit limits, the pricing of goods and services and the provision of equivalent levels of service, all on terms at least as favorable as those extended to the Debtors prepetition or on such other terms that are acceptable to the Debtors in their business judgment; (c) agree that the Debtors' standard terms and conditions (i) continue to govern the Essential Supplier's commercial relationship with the Debtors pending the closing of a Sale Transaction and (ii) shall govern the Essential Supplier's commercial relationship with the Purchaser after such a closing; (d) agree to release to the Debtors (or the Purchaser) as requested goods or other assets of the Debtors in the Essential Supplier's possession, and confirm that such supplier has no lien on production tooling based upon the Debtors' nonpayment of prepetition claims; and (e) agree not to contest the assumption (and subsequent assignment to the Purchaser) of any purchase order issued by the Debtors to such Essential Supplier on the grounds that such purchase order is not an executory contract or on any other grounds (other than the failure of a Purchaser other than New Chrysler to provide adequate assurance of future performance) (collectively, the "Trade Terms").

4. If an Essential Supplier accepts an Essential Supplier Payment and fails to provide the requisite Trade Terms, then (a) any Essential Supplier Payment received by the Essential Supplier shall be deemed an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (i) recover from the Essential Supplier in cash or goods or (ii) at the Debtors' option, apply against any outstanding administrative claim held by such Essential Supplier; and (b) upon recovery of any Essential Supplier Payment, the corresponding prepetition claim of the Essential Supplier will be reinstated in the amount recovered by the Debtors.

5. The Debtors shall implement and provide notice of the conditions set forth in paragraphs 3 and 4 above as follows:

- The Debtors may require an Essential Supplier to execute an agreement (a "Trade Agreement") prior to its receipt of an Essential Supplier Payment that (a) confirms that the Essential Supplier agrees to be bound by the Trade Terms, (b) confirms that the Essential Supplier has received and agrees to be bound by the order granting this Motion and (c) contains such other terms and conditions as the Debtors believe proper, including confidentiality provisions.
- If no Trade Agreement is executed, any payment pursuant to which an Essential Supplier Payment is made will be accompanied by (a) a notice from the Debtors explaining that acceptance of the payment by the Essential Supplier constitutes its agreement to provide the Trade Terms and explaining the consequences of its failure to comply with such agreement and (b) a copy of the order granting this Motion (collectively, the "Essential Supplier Information").
- In the Debtors' sole discretion, any check issued on account of an Essential Supplier Payment may include a restrictive endorsement on the back of the check substantially as follows:

By accepting this check, the payee agrees (a) to provide the payor and its affiliates, or any purchaser of substantially all of the payor's assets, with normalized trade credit and provide other business terms on a prospective basis (consistent with past practices), including with respect to any applicable credit limits, pricing and the provision of equivalent levels of service, on terms at least as favorable as those extended to the payor and its affiliates prior to the commencement of payor's chapter 11 case, identified as Case No. 09-50002 (AJG) and pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), or as are otherwise acceptable to the payor or the purchaser (as applicable), for the duration of any applicable vehicle's program life (including any continuing obligation to produce service parts), and (b) upon request, to release to payor, or any purchaser of substantially all of the payor's assets, any property of payor in payee's possession. Payee hereby submits to the jurisdiction of the Bankruptcy Court for the enforcement of such agreement.

6. The Debtors are authorized, but not required, to continue their Troubled Supplier Program, including paying or otherwise honoring obligations under existing Accommodation Agreements (to the extent any such payment is permitted by, and consistent with, the terms of the DIP Financing Facility) and negotiating and entering into new Accommodation Agreements with troubled suppliers, in their sole discretion. Nothing herein, however, shall be construed as an assumption of any Accommodation Agreement or an inducement for parties to perform under Accommodation Agreements.

7. The Debtors are authorized, but not required, to continue their participation in the Supplier Support Program, including paying or otherwise honoring any obligations associated therewith, in their sole discretion, to the extent any such payment is permitted by, and consistent with, the terms of the DIP Financing Facility. The Debtors are further authorized to take such actions as are necessary to cause the Receivables SPV to enter into the Forbearance Agreement.

8. The Debtors are authorized, but not required, in the exercise of their business judgment, to pay claims of any creditors or claimants entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code (the "Twenty-Day Administrative Claims") in the ordinary course of the Debtors' businesses and on such terms and conditions as the Debtors deem appropriate, to the extent any such payment is permitted by, and consistent with, the terms of the DIP Financing Facility. Nothing in this paragraph shall be construed as requiring the Debtors to make a payment to a particular creditor or claimant.

9. If a Repudiating Vendor refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code because the Debtors have failed to pay the vendor's prepetition claim, the Debtors are

authorized to pay such claim provisionally (a "Provisional Payment"), provided that, within three business days of payment, the Debtors file a Notice of Repudiating Vendor and seek the entry of an Order to Show Cause as set forth in paragraph 10 below.

10. If a Repudiating Vendor refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code, the Debtors may (whether or not they made a Provisional Payment as described above): (a) file a Notice of Repudiating Vendor, substantially in the form of notice attached to the Motion as Exhibit A, setting forth the Debtors' belief that the vendor is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the vendor, the identity of the agreement in question and, if any Provisional Payments were made, the amounts and date of such Provisional Payments; and (b) seek the entry of an Order to Show Cause, substantially in the form attached to the Motion as Exhibit B, which shall require the Repudiating Vendor to appear before the Court to show why it should not be (i) found to have willfully violated sections 362 and 365 of the Bankruptcy Code and (ii) required to return any Provisional Payment made by the Debtors.

11. The Debtors' banks and financial institutions (collectively, the "Banks") are authorized and directed, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, Essential Supplier Claims, the Twenty-Day Administrative Claims and the Provisional Payments, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and fund transfers. The Banks are

authorized to rely on the Debtors' designation of any particular check or fund transfer as approved by this Order.

12. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an Essential Supplier Claim, a Twenty-Day Administrative Claim or a valid reclamation claim; or (e) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

13. Any objection to granting of the relief requested by the Motion on a permanent basis shall be filed with the Court on or before May ____, 2009 (the "Objection Deadline"), and served, so as to be received by the Objection Deadline, upon: (a) the U.S. Trustee, Manhattan Office, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Brian S. Masumoto, Esq.); (b) Chrysler LLC Legal Department, 1000 Chrysler Drive, 14th Floor, Auburn Hills, Michigan 48326, Attn: Jereen Trudell, Esq.; (c) (i) Jones Day, 222 East 41st Street, New York, New York 10017, Attn: Corinne Ball, Esq. and Veerle Roovers, Esq., and (ii) Jones Day, 1420 Peachtree Street, N.E., Suite 800, Atlanta, Georgia 30309, Attn: Jeffrey B. Ellman, Esq.; (d) Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281, Attn: John J. Raspardi, Esq.; (e) counsel to any official committee of unsecured creditors appointed in these cases.

14. The Debtors shall, within two business days of the date of entry of this Interim Order, serve by United States mail, first class postage prepaid, copies of the Motion, this Interim Order and a notice (the "Final Hearing Notice") of the final hearing on the Motion

(the "Final Hearing") to be held on _____, 2009 at __:___.m. on: (a) the U.S. Trustee; (b) the creditors holding the 50 largest unsecured claims against the Debtors' estates, as identified in the Debtors' chapter 11 petitions; (c) counsel to the administrative agent for the Debtors' prepetition senior secured lenders; (d) counsel to Cerberus; (e) counsel to Daimler; (f) counsel to the UAW; (g) counsel to the U.S. Treasury; (h) those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002; and (i) counsel to any official committee of unsecured creditors appointed in these cases.

15. If no objections are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court a final order substantially in the form of the Final Order attached to the Motion, which Order may be entered with no further notice or opportunity to be heard afforded to any party.

16. The requirements of Bankruptcy Rule 6004(a) are hereby waived.

17. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon entry.

18. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order

Dated: New York, New York
_____, 2009

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT D

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

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

**FINAL ORDER, PURSUANT TO SECTIONS 105(a), 363(b) AND 503(b)(9)
OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTORS TO PAY
THE PREPETITION CLAIMS OF CERTAIN ESSENTIAL SUPPLIERS AND
ADMINISTRATIVE CLAIMHOLDERS, CONTINUING THE DEBTORS'
TROUBLED SUPPLIER PROGRAM AND GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 363(b) and 503(b)(9) of the Bankruptcy Code, for Interim and Final Orders Authorizing Them to Pay the Prepetition Claims of Certain Essential Suppliers and Administrative Claimholders, Continuing the Debtors' Troubled Supplier Program and Granting Certain Related Relief (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Memorandum of Law, the Declaration of Scott Garberding (the "Garberding Declaration") and the Affidavit of Ronald E. Kolka in Support of First Day Motions and Pursuant to Local Bankruptcy Rule 1007-2 (the "Kolka Affidavit") and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) notice of the Motion

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

and the Hearing was sufficient under the circumstances, (iv) there is good cause to waive the ten-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable and (v) the payment of the Essential Supplier Claims on the terms and conditions set forth herein is necessary and appropriate to preserve the value of the Debtors' assets, brands, businesses and estates for the benefit of all stakeholders; and the Court having determined that the legal and factual bases set forth in the Motion, the Memorandum of Law, the Garberding Affidavit and the Kolka Affidavit and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are authorized, in their sole discretion and in the ordinary course of their businesses, to pay Essential Supplier Claims to the extent such payments are permitted by, and consistent with, the terms of the DIP Financing Facility.
3. Each recipient of an Essential Supplier Payment authorized by this Order shall be required, without interruption and through the end of any applicable vehicle's program life (including any continuing obligation to produce service parts), to the extent applicable, to:
(a) continue its existing business relationship with the Debtors pending the closing of a Sale Transaction and, after such a closing, with the Purchaser on such terms as are acceptable to the Debtors in their business judgment; (b) continue to (i) extend normalized trade credit to the Debtors pending the closing of a Sale Transaction and, after such a closing, to the Purchaser and (ii) provide other business terms to such parties (as applicable) on a prospective basis (consistent with past practices and subject to adjustments and modifications contemplated by the applicable purchase order), including with respect to any applicable credit limits, the pricing of goods and services and the provision of equivalent levels of service, all on terms at least as favorable as

those extended to the Debtors prepetition or on such other terms that are acceptable to the Debtors in their business judgment; (c) agree that the Debtors' standard terms and conditions (i) continue to govern the Essential Supplier's commercial relationship with the Debtors pending the closing of a Sale Transaction and (ii) shall govern the Essential Supplier's commercial relationship with the Purchaser after such a closing; (d) agree to release to the Debtors (or the Purchaser) as requested goods or other assets of the Debtors in the Essential Supplier's possession, and confirm that such supplier has no lien on production tooling based upon the Debtors' nonpayment of prepetition claims; and (e) agree not to contest the assumption (and subsequent assignment to the Purchaser) of any purchase order issued by the Debtors to such Essential Supplier on the grounds that such purchase order is not an executory contract or on any other grounds (other than the failure of a Purchaser other than New Chrysler to provide adequate assurance of future performance) (collectively, the "Trade Terms").

4. If an Essential Supplier accepts an Essential Supplier Payment and fails to provide the requisite Trade Terms, then (a) any Essential Supplier Payment received by the Essential Supplier shall be deemed an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (i) recover from the Essential Supplier in cash or goods or (ii) at the Debtors' option, apply against any outstanding administrative claim held by such Essential Supplier; and (b) upon recovery of any Essential Supplier Payment, the corresponding prepetition claim of the Essential Supplier will be reinstated in the amount recovered by the Debtors.

5. The Debtors shall implement and provide notice of the conditions set forth in paragraphs 3 and 4 above as follows:

- The Debtors may require an Essential Supplier to execute an agreement (a "Trade Agreement") prior to its receipt of an Essential Supplier Payment that

(a) confirms that the Essential Supplier agrees to be bound by the Trade Terms, (b) confirms that the Essential Supplier has received and agrees to be bound by the order granting this Motion and (c) contains such other terms and conditions as the Debtors believe proper, including confidentiality provisions.

- If no Trade Agreement is executed, any payment pursuant to which an Essential Supplier Payment is made will be accompanied by (a) a notice from the Debtors explaining that acceptance of the payment by the Essential Supplier constitutes its agreement to provide the Trade Terms and explaining the consequences of its failure to comply with such agreement and (b) a copy of the order granting this Motion (collectively, the "Essential Supplier Information").
- In the Debtors' sole discretion, any check issued on account of an Essential Supplier Payment may include a restrictive endorsement on the back of the check substantially as follows:

By accepting this check, the payee agrees (a) to provide the payor and its affiliates, or any purchaser of substantially all of the payor's assets, with normalized trade credit and provide other business terms on a prospective basis (consistent with past practices), including with respect to any applicable credit limits, pricing and the provision of equivalent levels of service, on terms at least as favorable as those extended to the payor and its affiliates prior to the commencement of payor's chapter 11 case, identified as Case No. 09-50002 (AJG) and pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), or as are otherwise acceptable to the payor or the purchaser (as applicable), for the duration of any applicable vehicle's program life (including any continuing obligation to produce service parts), and (b) upon request, to release to payor, or any purchaser of substantially all of the payor's assets, any property of payor in payee's possession. Payee hereby submits to the jurisdiction of the Bankruptcy Court for the enforcement of such agreement.

6. The Debtors are authorized, but not required, to continue their Troubled Supplier Program, including paying or otherwise honoring obligations under existing Accommodation Agreements (to the extent such payment is permitted by, and consistent with, the terms of the DIP Financing Facility) and negotiating and entering into new Accommodation

Agreements with troubled suppliers, in their sole discretion. Nothing herein, however, shall be construed as an assumption of any Accommodation Agreement or an inducement for parties to perform under Accommodation Agreements.

7. The Debtors are authorized, but not required, to continue their participation in the Supplier Support Program, including paying or otherwise honoring any obligations associated therewith, in their sole discretion to the extent such payment is permitted by, and consistent with, the terms of the DIP Financing Facility. The Debtors are further authorized to take such actions as are necessary to cause the Receivables SPV to enter into the Forbearance Agreement.

8. The Debtors are authorized, but not required, in the exercise of their business judgment, to pay claims of any creditors or claimants entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code (the "Twenty-Day Administrative Claims") in the ordinary course of the Debtors' businesses and on such terms and conditions as the Debtors deem appropriate to the extent such payment is permitted by, and consistent with, the terms of the DIP Financing Facility. Nothing in this paragraph shall be construed as requiring the Debtors to make a payment to a particular creditor or claimant.

9. If a Repudiating Vendor refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code because the Debtors have failed to pay the vendor's prepetition claim, the Debtors are authorized to pay such claim provisionally (a "Provisional Payment"), provided that, within three business days of payment, the Debtors file a Notice of Repudiating Vendor and seek the entry of an Order to Show Cause as set forth in paragraph 10 below.

10. If a Repudiating Vendor refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code, the Debtors may (whether or not they made a Provisional Payment as described above):

- (a) file a Notice of Repudiating Vendor, substantially in the form of notice attached to the Motion as Exhibit A, setting forth the Debtors' belief that the vendor is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the vendor, the identity of the agreement in question and, if any Provisional Payments were made, the amounts and date of such Provisional Payments; and (b) seek the entry of an Order to Show Cause, substantially in the form attached to the Motion as Exhibit B, which shall require the Repudiating Vendor to appear before the Court to show why it should not be
 - (i) found to have willfully violated sections 362 and 365 of the Bankruptcy Code and
 - (ii) required to return any Provisional Payment made by the Debtors.

11. The Debtors' banks and financial institutions (collectively, the "Banks") are authorized and directed, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, Essential Supplier Claims, the Twenty-Day Administrative Claims and the Provisional Payments, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and fund transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or fund transfer as approved by this Order.

12. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of

any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an Essential Supplier Claim, a Twenty-Day Administrative Claim or a valid reclamation claim; or (e) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

13. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon entry.

14. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2009

UNITED STATES BANKRUPTCY JUDGE