



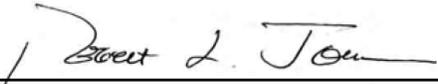
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

**The following constitutes the ruling of the court and has the force and effect therein described.**

**Signed July 10, 2020**

  
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**United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

IN RE: § Case No.: 18-50214-rlj-11  
REAGOR-DYKES MOTORS, LP, *et al.*<sup>1</sup> § Jointly Administered  
Debtors. §  
§  
§  
§  
§

**ORDER CONFIRMING DEBTORS' THIRD AMENDED CHAPTER 11 PLAN  
OF LIQUIDATION FOR REAGOR-DYKES AUTO GROUP, AS MODIFIED.**

On August 1, 2018, Reagor-Dykes Motors, LP, Reagor-Dykes Imports, LP, Reagor-Dykes Amarillo, Reagor-Dykes Auto Company, LP, Reagor-Dykes Plainview, LP, Reagor-Dykes Floydada, LP, followed by Reagor-Dykes Snyder, L.P., Reagor-Dykes III LLC, Reagor-Dykes II LLC, Reagor Auto Mall Ltd and Reagor Auto Mall I LLC on November 2, 2018 (collectively, the “**Debtors**” and

<sup>1</sup> The Debtors are Reagor-Dykes Imports, LP (Case No. 18-50215), Reagor-Dykes Amarillo (Case No. 18-50216), Reagor-Dykes Auto Company, LP (Case No. 18-50217), Reagor-Dykes Plainview, LP (Case No. 18-50218), Reagor-Dykes Floydada, LP (Case No. 18-50219), Reagor-Dykes Snyder, L.P. (Case No. 18-50321), Reagor-Dykes III LLC, (Case No. 18-50322), Reagor-Dykes II LLC (Case No. 18-50323), Reagor Auto Mall Ltd (Case No. 18-50324) and Reagor Auto Mall I LLC (Case No. 18-50325).

the “**Petition Date**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Texas (Lubbock Division) (the “**Court**”), initiating the above-referenced bankruptcy cases (the “**Chapter 11 Cases**”).

No trustee or examiner has been appointed in these Chapter 11 Cases.

On January 7, 2019, the Debtors filed the *Chapter 11 Plan of Reorganization* [Docket No. 795], on June 29, 2019, the Debtors filed the *First Amended Chapter 11 Plan of Reorganization* [Docket No. 1271], on September 3, 2019, the Debtors filed the *Second Amended Chapter 11 Plan of Reorganization* [Docket No. 1391] and on March 5, 2020, the Debtors filed the *Second Amended Chapter 11 Plan of Liquidation* [Docket No. 1762].

On June 29, 2019, the Debtors filed the *Disclosure Statement for First Amended Joint Plan of Reorganization* [Docket No. 1272], and on July 1, 2019, the Debtors filed a *Modified Disclosure Statement for First Amended Joint Plan of Reorganization* [Docket No. 1283]. On September 3, 2019, the Debtor filed the *First Amended Modified Disclosure Statement for Second Amended Joint Plan of Reorganization* [Docket No. 1390] (the “**Disclosure Statement**”).

On September 25, 2019, the Court entered the *Order Approving First Amended Modified Disclosure Statement for Second Amended Joint Plan of Reorganization for Reagor-Dykes Auto Group* [Docket No. 1433] (the “**Disclosure Statement Order**”).

The Disclosure Statement Order, among other things, (i) established November 22, 2019, as the deadline for submitting votes on the Plan, November 6, 2019 as the deadline for filing and serving objections to confirmation of the Plan, and (ii) scheduled a hearing commencing on December 11, 2019, at 10:00 a.m. (Central Time) to consider confirmation of the Plan and objections thereto (the “**Confirmation Hearing**”).

At the Debtors’ direction and supervision, the Debtors’ noticing, claims, and solicitation agent,

Stretto, (“**Stretto**”), transmitted solicitation packages in accordance with the Disclosure Statement Order, as attested to in various Affidavit of Service of Solicitation Packages (the “**Solicitation Affidavits**”) [Docket Nos. 1512, 1545, 1546, 1565, and 1586]. Pursuant to the Disclosure Statement Order, C. Ashley Ellis was appointed to serve as the party responsible for receiving completed ballots, determining and tabulating votes on the Plan, and determining whether each particular class of claims or interests under the Plan has accepted or rejected the Plan. As evidenced and attested to in the *Certification of C. Ashley Ellis Regarding Tabulation of Votes in Connection with the Proposed Second Amended Chapter 11 Plan of Reorganization for Reagor-Dykes Auto Group, as Modified* [Docket No. 1637] filed December 10, 2019 (the “**Ballot Declaration**”), Ms. Ellis received, reviewed, determined the validity of, and tabulated the ballots submitted by holders entitled to vote on the Plan.

Objections to confirmation of the Plan (collectively, the “**Objections**”) were filed by (i) Floyd CAD, Midland CAD [Docket No. 868], (ii) Ad Valorem Taxing Authorities [Docket No. 870], (iii) MUSA Auto Finance, LLC [Docket No. 1298], (iv) Bank of the West, et al. [Docket No.1549], (v) Ford Motor Company [Docket No.1552], (vi) Gulf States Toyota, Inc. [Docket No.1554], (vii) Patti Sue Noel [Docket No.1555], (viii) FirstCapital Bank of Texas [Docket No.1556], (ix) U.S. Trustee [Docket No.1557], (x) First Bank & Trust [Docket No.1559], (xi) Ford Motor Credit Company LLC [Docket Nos.1564 and 1828], (xii) U.S. Bank, National Association, USB Leading LT [Docket Nos.1571 and 1838], (xiii) Toyota Motor Credit Corporation [Docket No.1604], (xiv) Texas Comptroller of Public Accounts [Docket No.1607], (xv) AmeriCredit Financial Service, Inc. d/b/a GM Financial [Docket No.1611], (xvi) Vista Bank [Docket No.1633], (xvii) and GM, LLC [Docket No.1640]. Each objection other than the objection filed by US Bank [Docket No. 1838] was withdrawn; abandoned; or resolved by modifications and revisions made to the proposed plan and/or the inclusion of agreed language in the Confirmation Order. The final form of the plan, with all such modifications is the *Third Amended Chapter 11 Plan of Liquidation for Reagor-Dykes Auto Group, as Modified*

filed on July 7, 2020 (the “**Plan**”).<sup>2</sup>

NOW, THEREFORE, the Court having considered the Plan, the Solicitation Affidavits, Ballot Declaration, the *Declaration Of Robert Schleizer in Support Of Confirmation Of The Third Amended Chapter 11 Plan of Liquidation for Reagor-Dykes Auto Group, as Modified* (the “**Declaration**”), the Record (as defined below) of all evidence proffered or adduced and the arguments of counsel at the Confirmation Hearing, and the entire record of these Chapter 11 Cases, and after due deliberation thereon and good cause appearing therefor, this Court hereby makes and issues the following Findings of Fact and Conclusions of Law:<sup>3</sup>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. Jurisdiction and Venue. This Court has subject matter jurisdiction to confirm the Plan pursuant to 28 U.S.C. §§ 157 and 1334. Venue before this Court was proper as of the Petition Date and continues to be proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(A), (L), and (O), and this Court has exclusive jurisdiction to determine whether the Plan complies with applicable provisions of the Bankruptcy Code and should be confirmed. The Debtors are qualified to be debtors under section 109 of the Bankruptcy Code.

B. Burden of Proof. Based on the record before it, this Court finds that the Debtors have met their burden of proving the elements of §§ 1129(a) and 1129(b) of the Bankruptcy Code and that the Plan complies with all relevant Bankruptcy Code provisions, and, in particular, chapter 11,

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

<sup>3</sup> This Order constitutes this Court’s findings of fact and conclusions of law under Federal Rule of Civil Procedure 52, made applicable by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any and all findings of fact shall constitute findings of fact even if they are stated as conclusions of law, and any and all conclusions of law shall constitute conclusions of law even if they are stated as findings of fact.

including, without limitation, §§ 1122, 1123, 1125, 1126, and 1129(a) of the Bankruptcy Code.

C. Judicial Notice. This Court takes judicial notice of the docket in these Chapter 11 Cases maintained by the clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Court during these Chapter 11 Cases, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing.

D. The Record. The following record (the “**Record**”) was established to support confirmation of the Plan:

1. All documents identified by the Debtors at the Confirmation Hearing, including, without limitation, the final form of the Plan, the redline demonstrating changes and modifications to the *Second Amended Chapter 11 Plan of Liquidation for Reagor-Dykes Auto Group, as Modified* filed on March 5, 2020 resulting in the Plan (the “**Redline**”), the Declaration, the Disclosure Statement and all exhibits, schedules, and attachments thereto and filed in connection therewith, all of which were admitted into evidence without objection;
2. The Solicitation Affidavits;
3. The Ballot Declaration;
4. The entire record of these Chapter 11 Cases and the docket maintained by the clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and evidence and argument made, proffered, or adduced at the hearings held before the Court during the pendency of these Chapter 11 Cases, as to all of which the Court took judicial notice at the Confirmation Hearing; and
5. The statements and argument of counsel on the record at the Confirmation Hearing, and all papers and pleadings filed with the Court in support of, in opposition to, or otherwise in connection with, confirmation of the Plan.

E. Resolution of Objections and Approval of Modifications. As presented at the Confirmation Hearing and detailed in the Declaration, the consensual resolutions of multiple

Objections by the inclusion of revisions, modifications and agreed language in the Plan and this Order are appropriate, do not materially and adversely impact the treatment of any party who previously voted to accept, satisfy § 1127(a) and all applicable requirements of the Bankruptcy Code, meet the requirements of Bankruptcy Rule 3019 and all applicable Bankruptcy Rules, and are in the best interests of these Debtors and their Estates and supported by the Record and therefore, should be approved. All objections that were not resolved by agreement on or prior to the Confirmation Hearing are hereby overruled, or are otherwise disposed of, as set forth herein and on the record of the Confirmation Hearing. The evidence that was admitted in the Record via Declaration in support of confirmation of the Plan and all related matters demonstrates, by a clear preponderance of the evidence, that the Plan should be confirmed.

F. Solicitation and Notice. To obtain the requisite acceptance of the Plan, as reflected on the Solicitation Affidavits, on October 15, 2019, November 1, November 4, November 8 and November 19, 2019, the Debtors completed solicitation of acceptances and rejections of the Plan by distributing the Disclosure Statement and related materials to holders of Claims against the Debtors and Equity Interests in the Debtors classified in impaired classes entitled to vote under the Plan.

1. As evidenced by the Solicitation Affidavits, and in compliance with the requirements of the Disclosure Statement Order, the Debtors transmitted to all known holders of Claims against the Debtors classified in impaired classes entitled to vote under the Plan: (a) the Disclosure Statement Order; (b) a notice of hearing to consider confirmation of the Plan and deadline for filing objections thereto (the “**Confirmation Hearing Notice**”); (c) a ballot; and (d) a postage prepaid return envelope (collectively, the “**Solicitation Packages**”).
2. The results of the solicitation are evidenced in the Ballot Declaration, which was admitted into the record at the Confirmation Hearing.

G. Voting. The Solicitation Affidavit and the Ballot Declaration certified both the method of service of Solicitation Packages and results of the voting by impaired classes of claims with respect to the Plan. Classes 1A, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 15, 17 and 18 under the Plan are impaired.

Classes 1A, 5 and 11 overwhelmingly voted to accept the Plan pursuant to the requirements of sections 1124 and 1126 of the Bankruptcy Code. Holders of Claims in Classes 6, 15, 16, 17 and 18 did not submit any ballots with respect to the Plan. Thus, at least one impaired class of claims has voted to accept the Plan.

H. Compromises and Settlements Under and in Connection with the Plan. All settlements and compromises pursuant to and in connection with the Plan comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019. They are each (i) fair and equitable; (ii) fall within a reasonable range of potential outcomes of each respective dispute; and (iii) after due consideration of the probability of success litigating each matter, the future benefits with due consideration of the uncertainty of facts and law, complexity and likely duration involved in litigating each matter, including attendant expense, inconvenience, and delay and the paramount interest of creditors, are hereby approved.

I. Executory Contracts and Unexpired Leases. The Debtors have previously exercised reasonable business judgment in determining whether to reject, assume, or assume and assign each of its executory contracts and unexpired leases prior to the confirmation of the Plan. Except as otherwise provided in this Order or Article XI of the Plan, the Plan also constitutes a motion to reject all of the Debtors' executory contracts and unexpired leases. Each pre- or post-confirmation rejection, assumption, or assumption and assignment of an executory contract or unexpired lease pursuant to Article XI of the Plan will be legal, valid, and binding upon the Debtors and all non-Debtors parties to such executory contract or unexpired lease, as applicable, all to the same extent as if such rejection, assumption, or assumption and assignment had been effectuated pursuant to an appropriate order of the court entered before the Confirmation Date under section 365 of the Bankruptcy Code. Each executory contract and unexpired lease to be rejected is deemed to be an executory contract or an unexpired lease, as applicable. Each executory contract or unexpired lease to be rejected pursuant to

the Plan is burdensome and the rejection thereof is in the best interests of the Debtors and its Estates.

J. Standing. The Debtors have satisfied section 1121 of the Bankruptcy Code in that the Debtors have standing to file a plan. Furthermore, the Plan reflects the date it was filed with the Court and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a).

K. Compliance with Requirements of Section 1129 of the Bankruptcy Code

1. The Plan Complies with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth below, and as demonstrated by the Record, the Plan complies with all relevant sections of the Bankruptcy Code, Bankruptcy Rules and applicable non-bankruptcy law relating to the confirmation of the Plan. In particular, the Plan complies with all of the requirements of section 1129 of the Bankruptcy Code.

a. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). The Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code. The Plan's classifications conform to the statute and separately classify claims based on valid business and legal reasons. The Debtors' classification structure has a rational basis because it is based on the respective legal rights of each holder of a Claim against or Equity Interest in the Debtors' Estates and was not proposed to create a consenting impaired class and, thereby, manipulate class voting. Article V of the Plan designates classes of Claims and Equity Interests that require classification.

b. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan complies fully with the requirements of section 1123(a)(2) of the Bankruptcy Code. Articles IV and V of the Plan specify which classes of Claims and Equity Interests are not impaired under the Plan.

c. Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan complies fully with the requirements of section 1123(a)(3) of the Bankruptcy Code.

Article VI of the Plan specifies the treatment of classes and interests under the Plan, including those which are impaired.

d. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan complies fully with the requirements of section 1123(a)(4) of the Bankruptcy Code. As reflected in the treatment set forth in Article V of the Plan, the treatment of each of the Claims and Equity Interests in each particular class is the same as the treatment of each of the other Claims or Equity Interests in such class; provided, however, to the extent any claimant received any better or subordinated treatment than that described by the Plan for its class on the basis of the standards for compromise and settlement, the Court hereby finds that such better or subordinated treatment does not need to be made available to other members of the class.

e. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan provides adequate means for its implementation, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

f. Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan contemplates and mandates liquidation of the Debtors' Estates and remaining assets and, therefore, no securities will be issued. Therefore, the Plan complies with section 1123(a)(6) of the Bankruptcy Code.

g. Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). The Plan contemplates and mandates liquidation of the Debtors' Estates and remaining assets, and therefore, no directors or officers will be appointed under the Plan. The Plan appoints the Trustee to administer the Creditors Trust after confirmation of the Plan, with the Trustee's compensation as set forth in the Trust Agreement and Plan.

h. Compliance with Bankruptcy Rule 3016. The Plan is dated and

identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b).

i. Compliance with Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan was conducted in accordance with the Disclosure Statement Order and otherwise satisfies Bankruptcy Rule 3018. The Plan was transmitted to all creditors entitled to vote on the Plan and those other parties entitled to notice under applicable law. Sufficient time was prescribed for such creditors to accept or reject the Plan, and the solicitation materials and procedures comply with section 1126 of the Bankruptcy Code. The requirements of Bankruptcy Rule 3018 are thereby satisfied.

2. Debtors' Compliance with Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3013, 3018 and 3019 and all applicable orders of this Court. The solicitation of acceptances or rejections of the Plan was (a) in compliance with the solicitation procedures set forth in the Disclosure Statement Order, and (b) solicited after disclosure of adequate information as defined in section 1125(a) of the Bankruptcy Code to holders of claims and interests, and, therefore, the Plan satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

3. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Plan has been proposed in good faith and not by any means forbidden by law. The Plan is the result of good-faith, arms-length negotiations with creditors and other parties in interest in these Chapter 11 Cases that have been long and contentious. The compromises and settlements now set forth in the Plan are each a reasonable exercise of the Debtors' business judgment that is supported by valid business reasons and in compliance with the requirements of Bankruptcy Rule 9019 and Bankruptcy Code section 105(a). In determining that the Plan has been proposed in good faith, the Court has examined the totality of the

circumstances surrounding the formulation of the Plan. The Plan is designed to effectuate the liquidation of the Debtors' Estates and remaining assets and distribute those assets to holders of Allowed Claims, in accordance with the Plan, the Trust Agreement, and this Order. Moreover, the Plan itself and the process leading to its formulation provide independent evidence that the Plan has been proposed in good faith, including, without limitation, Debtors' efforts in formulating and soliciting the Plan. The purpose of the Plan is not to avoid taxes or any applicable securities laws, or any other improper purpose; instead, the principal purpose of the Plan is to efficiently and effectively administer the estates' assets for maximize value to creditors and other parties in interest.

4. Payment of Costs and Expenses (11 U.S.C. § 1129(a)(4)). The Plan process by which all payments made, or to be made, by the Debtors' Estates for services or for costs and expenses in connection with these Chapter 11 Cases or in connection with the Plan and incident to these Chapter 11 Cases is reasonable and is approved as appropriate under the circumstances. The Court further finds that any fees and expenses payable to any professional persons retained in this case are subject to approval of this Court in accordance with applicable law. Therefore, the Plan satisfies the requirements of section 1129(a)(4) of the Bankruptcy Code.

5. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). Under the Plan, the Debtors will not continue to exist as a legal corporate entity. The Plan does not propose to have the Debtors' directors and officers serve, after confirmation of the Plan. No voting trustee of the Debtors, affiliate of the Debtors participating in a joint plan with the Debtors, or a successor to the Debtors under the Plan will serve or be appointed after confirmation of the Plan. The Debtors have fully and accurately disclosed the trustee of the Creditors Trust, any of his affiliations or connections to the Debtors or the creditors in these cases, and his proposed compensation. The trustee's qualifications and disinterestedness were disclosed and approved to this Court's order approving that certain *Emergency Application for Order Authorizing the Debtors' Retention of Lain Faulkner as Special Litigation Consultant to the*

*Debtors Nunc Pro Tunc to April 23, 2020.* See Docket Nos. 1825 and 1827, and Mr. Faulkner's appointment is in the best interests of creditors. Thus, the Plan meets the requirements of section 1129(a)(5) of the Bankruptcy Code.

6. Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code is inapplicable to confirmation of the Plan because there are no rate changes provided for in the Plan over which a governmental regulatory commission will have jurisdiction.

7. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). With respect to each Impaired Class of claims and interests, each holder of a claim or interest of such Class has accepted the Plan, or will receive or retain under the Plan on account of such claim or interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. Therefore, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

8. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(8)). The Plan was accepted by more than one impaired voting classes of claims and interests. Therefore, the Plan satisfies the requirements of section 1129(a)(8) of the Bankruptcy Code.

9. Treatment of Administrative, Priority, and Tax Claims (11 U.S.C. § 1129(a)(9)). Except to the extent that the holder of a Claim agrees to different treatment of such Claim, the Plan provides that Administrative Expense Claims will be paid in accordance with the Bankruptcy Code, the Plan and the Trust Agreement. Pursuant to section 10.3(i)(ii) of the Plan, the Trustee will reserve the full amount of the Disputed Administrative Claim asserted by U.S. Bank. Pursuant to an agreement reached with Ford Motor Credit Company, LLC ("FMCC"), notwithstanding section 4.1(a) of the Plan, FMCC shall have sixty (60) days from the Effective Date of the Plan to file any request for Administrative Claim. Therefore, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

10. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Pursuant to section 1129(a)(10) of the Bankruptcy Code, if a class of claims is impaired under the Plan, at least one class of claims that is impaired under the Plan must accept the Plan, determined without including any acceptance of the Plan by any insider. This requirement has been satisfied as Classes 1A, 5, and 11 are each Impaired under the Plan and each voted to accept the Plan.

11. Feasibility (11 U.S.C. 1129(a)(11)). Ordinarily, the feasibility test, used to determine whether section 1129(a)(11) of the Bankruptcy Code has been satisfied, determines whether a reorganization plan can be successfully implemented. Because the Plan contemplates liquidation and transfers the remaining assets of the Debtors' Estates to the Trust, reorganization is not required and the feasibility test is satisfied based on a showing that there is a "reasonable probability" that the Creditor Trustee will accomplish what is proposed under the Plan. Therefore, section 1129(a)(11) of the Bankruptcy Code is satisfied.

12. Payment of Fees (11 U.S.C. § 1129(a)(12)). The Debtors have paid, or shall pay, on or prior to the Effective Date, all amounts due under 28 U.S.C. § 1930; therefore, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

13. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)-(16)). These sections are not applicable.

14. Nonconsensual Confirmation (Cramdown) of Non-Accepting Classes (11 U.S.C. § 1129(b)). The Plan does not discriminate unfairly and is fair and equitable to each Class of Claims or Equity Interests that has not voted to accept the Plan, specifically including Classes 4,6,8,15,17 and 18. The Plan contains nineteen (19) classes, three (3) of which are left intentionally blank due to prior modifications to the Plan, one (1) of which is unimpaired and deemed to accept,<sup>4</sup> and one (1) of which

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<sup>4</sup> Class 1 is deemed to accept.

is deemed to reject.<sup>5</sup> The remaining fourteen (14) classes are impaired classes of claims/interests entitled to vote on the Plan. Of those fourteen (14) impaired classes, three (3) originally voted to accept the Plan, including Class 11 consisting of general unsecured creditors.<sup>6</sup> Of the remaining eleven (11) impaired classes that did not originally vote to accept the Plan, five (5) such classes have, since the filing of the Ballot Declaration, either changed their rejecting vote to an accepting vote, agreed to support confirmation of the Plan, did not object to confirmation, or have withdrawn their objections to confirmation. Specifically:

Class 2: Secured Claim of Ford Motor Credit Company, LLC: Ford Motor Credit Company, LLC requested certain plan modifications and accommodations from the Debtors and has now agreed to withdraw its opposition to confirmation of the Plan;

Class 3: Secured Claim of GM Financial: Pursuant to a settlement reached and incorporated into the Plan, GM Financial has now agreed to vote in favor of the Plan and support confirmation;

Class 7: Secured Claim of Vista Bank: Pursuant to a settlement reached and incorporated into the Plan, Vista Bank has now agreed to vote in favor of the Plan and support its confirmation of the Plan;

Class 12: Unsecured Claims of Ford Motor Credit Company, LLC: Ford Motor Credit Company, LLC requested certain plan modifications and accommodations from the Debtors and has now agreed to withdraw its opposition to confirmation of the Plan; and

Class 13: Unsecured Claims of GM Financial: Pursuant to a settlement reached and incorporated into the Plan, GM Financial has now agreed to vote in favor of the Plan and support confirmation.

Section 1129(b) is satisfied as to each impaired non-accepting class, because: (a) all similarly situated Holders of Claims and Interests will receive the same treatment, (b) the Plan does not unfairly discriminate, and (c) the Plan does not provide for distributions to junior claims or interests unless

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<sup>5</sup> Class 16 is deemed to reject.

<sup>6</sup> Classes 1A, 5, and 11 all voted to accept the Plan.

senior claims or interests are paid in full; therefore, the Plan is “fair and equitable.” Finally, the Plan does not violate the “absolute-priority” rule contained in section 1129(b)(2).

15. Confirmation of Only One Plan (11 U.S.C. § 1129(c)). The Plan (including previous versions thereof) is the only plan that has been filed in this Chapter 11 Case, which has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

16. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The Plan complies fully with the requirements of section 1129(d) of the Bankruptcy Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933.

17. Satisfaction of Confirmation Requirements. The Plan satisfies all of the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

L. Good-Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Court in this case, the Debtors have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and as otherwise provided herein.

M. Conditions Precedent to Confirmation. Upon entry of this Order, the Creditors Trust shall be promptly created all conditions precedent to confirmation of the Plan, if not waived, shall be, and hereby are satisfied.

N. Plan Documents. The Court finds that the Plan Documents, including the Trust Agreement, Plan, Disclosure Statement and all exhibits thereto, as they may be amended as

contemplated and permitted by the Plan, have been negotiated in good faith and are, in the judgment of the Court and the parties, necessary and appropriate to effectuate the Plan.

O. Retention of Causes of Action/Reservation of Rights. Pursuant to § 1123(b) of the Bankruptcy Code, all Causes of Action (as defined in the Plan and Disclosure Statement, other than those Causes of Action specifically settled and released pursuant to the Plan, and specifically including, but not limited to, (i) Chapter 5 Causes of Action, (ii) all actions currently on file, and (iii) all actions listed on Exhibit “A” to this Order) are hereby preserved by this Plan, notwithstanding the occurrence of the Effective Date. The Creditors Trustee shall, on behalf of the Debtors, retain the exclusive authority and all rights to enforce, commence, and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, and the Creditors Trustee’s rights to commence, prosecute, or settle such Causes of Action shall be preserved. . For the avoidance of doubt, the preservation of Causes of Action herein includes, without limitation, the right to object to all Claims, including Secured Claims, Administrative Claims, Priority Claims, and General Unsecured Claims. The Trustee’s right to commence and prosecute Causes of Action shall not be abridged or materially altered in any manner by reason of confirmation of the Plan.

**ORDER**

**Confirmation of the Plan**

Based upon the foregoing, and after due deliberation and sufficient cause, it is **ORDERED, ADJUDGED AND DECREED** that:

**Confirmation of the Plan**

1. The Plan shall be, and hereby is, confirmed in each and every respect pursuant to section 1129 of the Bankruptcy Code. Any modifications to the Plan shall be, and hereby are, approved and are incorporated into and made part of the Plan pursuant to section 1127 of the Bankruptcy Code. Each and every provision of the Plan is incorporated by reference into, and is made an integral part of, this Order as if the Plan were set forth in its entirety in this paragraph. Further, the provisions of the Plan and this Order, including the findings of fact and conclusions of law set forth herein, are non-severable and mutually dependent.

**Objections to Confirmation of the Plan**

2. All Objections to confirmation of the Plan, other than those withdrawn prior to, or on the record at, the Confirmation Hearing, or resolved prior to entry of this Order through modifications to the Plan or the inclusion of agreed language herein, are hereby expressly overruled.

**Compromises and Settlements Under the Plan**

3. The settlements and compromises set forth in the Plan are approved in all respects pursuant to Bankruptcy Rule 9019(b) and § 1123(b)(3) of the Bankruptcy Code and the Debtors and the Creditors Trustee are hereby authorized and directed to take all actions necessary or appropriate to implement and consummate the provisions of, and transactions described or contemplated in, the Plan.

**Classification and Treatment**

4. All Claims and Equity Interests shall be, and hereby are, classified and treated as set forth in the Plan. The Plan's classification scheme shall be, and hereby is, approved.

5. The treatment of all Claims and Equity Interests as provided in the Plan and the Plan Documents shall be, and hereby is, approved.

**Effects of Confirmation**

6. Binding Effect. In accordance with the provisions of section 1141 of the Bankruptcy Code and immediately upon entry of this Order, the Plan and all of its provisions shall be, and hereby are, binding on the Debtors, any person acquiring or receiving property or a distribution under the plan, any lessor or lessee of property to or from the Debtors, any past, present, or future creditor of the Debtors and any holder of a claim against or interest in the Debtors, whether or not such claim or interest of such holder is impaired under the Plan, whether known or unknown, and whether or not such holder has accepted or rejected the Plan or will or will not receive a distribution under the Plan.

7. Subject to the terms of the Plan and this Order, all prior orders of this Court entered in this Chapter 11 Case, all documents and agreements executed by the Debtors as authorized and directed thereunder, and all motions or requests for relief by the Debtors pending before the Court as of the Effective Date shall be, and hereby are, binding on and shall inure to the benefit of the Creditors Trust.

8. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Order, the Plan and the Plan Related Documents shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

**Matters Relating to Implementation of the Plan**

9. Creditors Trust. On the Effective Date, the Creditors Trust shall be created. The appointment of Dennis Faulkner as the Creditors Trustee pursuant to the terms of the Trust Agreement is in the best interests of all creditors and parties in interest and is hereby approved. The form, terms and provisions of the Plan Documents, specifically including the Trust Agreement and all other exhibits to the Plan, Disclosure Statement and any other documents executed and delivered in connection with the Plan, are hereby approved and each of the Plan Documents shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in accordance with its terms.

10. Vesting of Assets. On the Effective Date, except as otherwise expressly provided in the Plan or this Order, title to all Assets shall vest in the Creditors Trust, free and clear of all liens, Claims, Causes of Action, interests, rights, Security Interests, and other encumbrances. The Creditors Trust Assets shall be deemed and are transferred to and shall vest in the Trust and be deemed contributed thereto, subject to the terms of the Plan and this Order. All property held in the Trust for distribution pursuant to the Plan will be held solely in trust for the Creditors Trust Beneficiaries as set forth in the Plan. The Debtors and the Trustee are hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of the Creditors Trust Assets to the Trust. Mr. Robert Schleizer and Mr. Lyndon James are authorized to execute all documents reasonably necessary to effectuate the terms of the Plan and this Order.

11. Trust Administration. From and after the Effective Date, the Trustee will administer the Trust in accordance with the terms and conditions of the Trust Agreement and Article VIII of the Plan. The Trustee will endeavor to liquidate the Creditors Trust Assets and distribute the Litigation Proceeds in an expeditious but orderly manner, and will make timely Distributions to Holders of Allowed Claims and the Debtors in accordance with the Plan, this Order, and the Trust Agreement.

12. Case Administration. From and after the Effective Date and continuing through the date that a final decree closing the case is entered under section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Trustee will possess the rights of the Debtors for all matters arising in, arising under or related to these Chapter 11 Cases. In addition to, and without limiting the generality of the foregoing, for all matters arising in, arising under or related to the case, the Trustee will: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtors (including, without limitation, financial records, tax returns, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing to commence Avoidance Actions and other Causes of Action, and settle any Causes of Action, without notice or an order from the Bankruptcy Court; (vi) object to or consent to Claims, amend the Debtors' schedules and statements of financial affairs, and agree to reopen the bar date; (vii) be entitled to request the Bankruptcy Court to enter a final decree closing the case; (viii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in this case; (ix) pay professionals, without notice or court orders, and (x) have all other rights, privileges, and protections set forth in the Trust Agreement.

13. Property of the Debtors. The Trust has express authority to convey, transfer, and assign any and all property of the Debtors consistent with the terms of the Plan and Trust Agreement, and to take all actions necessary to effectuate the same.

14. Section 1146 Exemption. Pursuant to § 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States. State and local government officials or agents must

accept for filing recordation instruments or other documents and forego the collection of any such tax or governmental assessment in connection with such transfers of property.

**Executory Contracts and Unexpired Leases**

15. On the Effective Date, all executory contracts and unexpired leases that were not previously rejected, assumed, or assumed and assigned shall be, and hereby are, rejected in accordance with Article XI of the Plan.

**Insurance**

16. Confirmation and consummation of the Plan shall have no effect on insurance policies of the Debtors in which the Debtors are or were an insured party or the insured parties. Each insurance company is prohibited from denying, refusing, altering, or delaying coverage on any basis regarding or related to the Chapter 11 Cases or the Plan.

**Retention of Jurisdiction**

17. Notwithstanding the entry of this Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and related matters after the Confirmation Date and after the Effective Date, as legally permissible, as and to the extent provided in the Plan.

**Payment of Statutory and Other Fees**

18. The Trust shall pay: (i) statutory fees under 28 U.S.C. § 1930 to the extent arising after the Effective Date; and (ii) expenses in accordance with the Plan and the Trust Agreement.

**Notice of Entry of Confirmation Order**

19. Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c), the Debtors shall be, and hereby are, directed to serve a notice of entry of this Order on all holders of claims and interests to whom

notice of the Confirmation Hearing was mailed and the United States Trustee no later than three (3) business days after the Order has been entered.

**Confirmation Order Effective Immediately**

20. Notwithstanding Bankruptcy Rules 3020(e) and 7062, to the extent applicable, the Court finds that there is no reason for delay in the implementation of this Order and, thus, this Order shall be a Final Order as that term is defined in the Plan and shall be effective and enforceable immediately upon entry.

**Effect of Reference to the Plan in this Order**

21. The failure to include or specifically reference any particular provision of the Plan in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in its entirety. The provisions of the Plan and of this Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Order shall govern and any such provision of this Order shall be deemed a modification of the Plan and shall control and take precedence.

**Waiver of Rule 3020(e)**

22. Application of Bankruptcy Rule 3020(e) is hereby waived, such that this Order shall not be subject to the Rule 3020(e) 14-day stay, but rather this Order is a Final Order (as such term is defined in the Plan) immediately.

**Reversal**

23. If any or all of the provisions of this Order are hereafter reversed, modified or vacated by subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under, or in connection with, the

Plan prior to the Trustee's receipt of written notice of any such order; nor shall such reversal, modification or vacatur of this Order affect the validity or enforceability of such act or obligation. Notwithstanding any such reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order, the Plan, the Trust Agreement and any amendments or modifications thereto.

**Headings and Miscellaneous**

Headings utilized herein are for the convenience of reference only, and shall not constitute a part of the Plan or this Order for any other purpose. Use of the terms "include," "including," or similar phrases used herein shall expressly mean "including without limitation" without the need to repeat same each time "include" or "including" is used herein.

**### End of Order ###**

**PREPARED AND SUBMITTED BY:**

/s/ C. Ashley Ellis

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## EXHIBIT A

### Retained Causes of Action

All Causes of Action are retained by the Debtor(s) or the successor to the Debtors – that is, the Creditor Trustee – under the Plan. In the abundance of caution, in addition to the Avoidance Actions and the Causes of Action and claims of the Estates listed in the Debtors' Statement of Financial Affairs and the Disclosure Statement, the Debtors also list the following Causes of Action and claims as being retained by the Plan and the Confirmation Order:

all claims and Causes of Action listed in, referenced in, or attached as an exhibit to the Plan, the Disclosure Statement, the Schedules, Statements of Financial Affairs, Plan Supplement, or in any Plan Document, and all claims and causes of action for all contract theories of recovery, including contract and usury, quasi-contract claims, including quantum meruit, promissory estoppel, suit on a sworn account, money had and received, tort theories of liability, including tortious interference with existing contract, tortious interference with contractual/business relations, conversion, breach of fiduciary duty, fraud, bad faith denial of coverage or other insurance claim, constructive eviction, wrongful eviction, wrongful foreclosure, malpractice, libel, slander, malicious prosecution, negligence, gross negligence, premises liability, trade-secret misappropriation, misrepresentation; breach of warranty claims and related theories of recovery; statutory claims and related theories of recovery, including claims under the Bankruptcy Code, including objections to the allowance of claims for disgorgement or otherwise, including any related to extent, priority, subordination, or validity of liens, claims under 11 U.S.C. §§ 509, 510, 542, 543, 544, 547, 548, 549, and 550, claims pursuant to the Texas Business and Commerce Code, including fraudulent transfers under all applicable law, including chapter 27, and claims pursuant to title 18 U.S.C., participatory, vicarious, secondary, and related theories of liability including, without limitation, aiding and abetting, conspiracy, principal-agent, partnership, alter ego, common enterprise, joint and several liability, proportionate responsibility, contribution, and veil piercing; equitable claims including claims for lien subordination and contempt; any such claim or cause of action relating to any counterclaim, demand, controversy, cost, debt, sum of money, account, reckoning, bond, bill, damage, obligation, liability, objection, legal proceeding, equitable proceeding, and execution of any nature, type, or description, avoidance action, preference action, fraudulent-transfer action, strong-arm-power action, state-law fraudulent-transfer action, improper assignment of interest, negligence, gross negligence, willful misconduct, usury, fraud, deceit, misrepresentation, conspiracy, unconscionability, duress, economic duress, defamation, control, interference with

contractual and business relations, conflict of interest, misuse of insider information, concealment, disclosure, secrecy, misuse of collateral, wrongful release of collateral, failure to inspect, environmental due diligence, negligent loan processing and administration, wrongful recoupment, wrongful setoff, violations of statutes and regulations of governmental entities, instrumentalities and agencies, equitable subordination, debt recharacterization, substantive consolidation, securities and antitrust laws violations, tying arrangements, deceptive trade practices, breach or abuse of any alleged fiduciary duty, breach of any special relationship, course of conduct or dealing, obligation of fair dealing, obligation of good faith, at law or in equity, in contract, in tort, or otherwise, known or unknown, suspected or unsuspected; and any claims or causes of action related to any matter listed on the Schedules or Statement of Financial Affairs of any of the Debtor, including all attachments and amendments thereto (the foregoing claims and causes of action are collectively referred to as the “*Claims and Causes of Action*”).

The Creditor Trustee shall have the right to supplement the Claims and Causes of Action as necessary throughout their/his investigation of the Debtors’ affairs. In connection with the Claims and Causes of Action, the following is designated as potential damages claims:

All available theories of recovery and damages, including, without limitation, all actual, punitive, and other statutory damage claims, rights to reimbursement and costs, and all other relief, general or special, at law or in equity, to which the Debtors or the Creditor Trustee may be rightfully entitled.

The following non-exhaustive and non-mutually exclusive list of entities and individuals as potential defendants to the Claims and Causes of Action includes all names listed in the Schedules, and:

All current and former officers, directors, employees, and other agents of the Debtors and all affiliates of the Debtors, all trade vendors and other creditors of the Debtor, all entities and individuals that received transfers from or on behalf of the Debtors at least from July 31, 2014, (and maybe longer) to the present and maybe longer; all entities and individuals that owed fiduciary duties to the Debtors from July 31, 2014, (and maybe longer) to the present; all banks who received money from the Debtors, held deposited funds, or otherwise did business with the Debtors; all “retail lenders” with whom the Debtors did business, including lenders who are later

found to have not funded retail installment contracts;<sup>1</sup> all insurance companies with any insurance coverage in place for the benefit of the Debtors from July 31, 2014 (and maybe longer), to the present; all individuals and entities listed on the Schedules or Statement of Financial Affairs of the Debtors, including any attachments and amendments thereto; all companies that furnished utilities for the Debtors, all unsecured creditors of the Debtors, all investors of the Debtors and the Non-Debtor Affiliates, any entity or individual in possession of or having control over property of the Debtors or operations of the Debtors; any entity or individual responsible or who contributed to any losses or damages suffered by the Debtors or its creditors or investors, or any party that has appeared in the Bankruptcy Case (collectively referred to as the “*Potential Parties*”).

To the extent not otherwise already included above, the Potential Parties include, without limitation, the following:

- Ford Motor Credit Company, LLC
- AmeriCredit Financial Services, Inc. d/b/a GM Financial, LLC
- AIM Bank, its officers and directors
- First Capital Bank of Texas, N.A., its officers and directors
- First Bank and Trust, Co., its officers and directors
- Liberty Capital Bank, its officers and directors
- Vista Bank, its officers and directors
- Ford Motor Company
- Gulf States Toyota
- General Motors Company
- Lane Gorman Trubitt
- Ally Financial, Inc.

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<sup>1</sup> The Debtors estimate that they conducted business with over 58 such retail lenders, including those listed herein, many of whom have filed motions in the Bankruptcy Court. These include banks, finance companies, and credit unions.

- Americredit
- Bank of The West
- BB&T Dealer Finance
- BBT
- BBT Dealer Finance
- BBVA Compass
- Credit Acceptance Corporation
- Capital One
- Compass Bank
- CPS
- Exeter Finance LLC
- First Basin Credit Union
- First Financial Bank
- Flagship Credit Acceptance
- Foursight Capital LLC
- Global Lending Services, LLC
- MUSA
- MY Community Federal Credit Union
- PAC Auto Finance
- Regional Acceptance Corporation
- Santa Fe Federal Credit Union
- Santander Consumer USA Inc.
- SunTrust Banks, Inc.
- TD Auto Finance LLC

- US Bank
- Westlake Financial Services
- John Steinmetz
- Drew Anderson
- Brad Burgess
- Barry Orr
- Toby Cecil
- Jared Townsend
- McQhorter Cobb and Johnson, LLP
- Manheim Remarketing, Inc.
- Online Vehicle Exchange, LLC

To reiterate, the preserved litigation includes litigation against all parties who participated in any scheme and all parties (including “retail lenders”) who did not fund sales of chattel paper (also known sometimes as “contracts in transit”), owe the Debtors/Estates for any cause of action, benefitted from payments made by the Debtors, or otherwise holds money due to the Debtors.

Potential Parties include all affiliates, successors, transferees, directors, officers, employees, and other agents of any entity or individual that would otherwise qualify as a Potential Party.

The Creditor Trustee shall have the right to supplement the Claims and Causes of Action as necessary throughout its/his investigation of the Debtors’ affairs.

\*This is a non-exclusive list. The failure to include any name or title on this list, the Schedules, the Statements of Financial Affairs, the Plan, the Disclosure Statement, or any Plan Document should not be construed as a waiver by the Debtors or Creditors Trustee of any Cause of Action against that individual or Entity.